



City of North Port

4970 CITY HALL BLVD
NORTH PORT, FL 34286

Meeting Minutes City Commission Regular Meeting

CITY COMMISSIONERS

Linda M. Yates, Mayor
Vanessa Carusone, Vice-Mayor
Christopher B. Hanks, Commissioner
Jill Luke, Commissioner
Debbie McDowell, Commissioner

APPOINTED OFFICIALS

Peter Lear, City Manager
Amber L. Slayton, Interim City Attorney
Patsy Adkins, City Clerk
Kathryn Peto, Deputy City Clerk

Tuesday, July 11, 2017

1:00 PM

CITY COMMISSION CHAMBERS

AMENDED #1 AGENDA (updating backup material on Item Number 5.C. 17-1155; removing Item Number 6.G. 17-1166 and Item Number 4.A. 17-1094; and adding General Business Item 5.I. 17-1201)

CALL TO ORDER/ROLL CALL

The North Port City Commission Regular Meeting was called to order at 1:05 p.m. in City Chambers by Mayor Yates.

Present: Mayor Yates; Vice-Mayor Carusone; Commissioners Hanks, Luke and McDowell; City Manager Lear; Interim City Attorney Slayton; Acting City Attorney Mooney-Portale; City Clerk Adkins; Deputy City Clerk Peto and Assistant Police Chief Pelfrey.

A moment of silence was observed followed by the Pledge of Allegiance led by the Commission.

1. APPROVAL OF AGENDA – COMMISSION

It was requested to postpone Agenda Item 5.C. to a special meeting or workshop, from the agenda, and move Item 5.G., immediately after Item 4.C., the Time Certain item.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner McDowell, to move Agenda Item 5.C. to a special meeting or workshop, and to move Item 5.G., immediately after Item 4.C.

Discussion ensued: (1) Commissioner McDowell: [a] voiced concern that a delay with Agenda Item 5.C., may negatively affect the purchase of the Orange Hammock property; [b] a definitive date is needed for the workshop or special meeting.

A vote was taken on the motion and the motion failed on a one-to-four (1-4) vote with Mayor Yates, and Commissioners Hanks, Luke and McDowell dissenting.

Only Commissioner McDowell provided reasons for dissenting:

Yes: 1 - Vice-Mayor Carusone

No: 4 - Mayor Yates, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

A motion was made by Commissioner McDowell, seconded by Commissioner Luke, to move Agenda Item 5.G., immediately after 4.C. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

2. ANNOUNCEMENTS

A. [17-1196](#) Current Vacancies for Boards and Committees.

City Clerk Adkins read the Current Vacancies for Boards and Committees into the record.

B. [17-1197](#) Upcoming Expiration Dates for Boards and Committees.

City Clerk Adkins read the Upcoming Expiration Dates for Boards and Committees into the record.

3. PUBLIC COMMENT:

Public Comment was held 1:22 p.m. - 1:36 p.m.

John Thaxton; David Iannotti; Jono Miller: the Orange Hammock property.

Joan San Lwin: Warm Mineral Springs Master Plan

Victor Dobrin: the traffic light at U.S. 41 and Gran Paradiso.

4. PUBLIC HEARINGS:

A. [17-1094](#) Petition No. Gen-17-048, Ordinance No. 2017-13 First Reading,, Amendments to Chapter 46, Article II, Division 2, Noise, Section 46-40 and Section 46-42 of the Code of the City of North Port, Florida to exempt planned developments from the noise regulations as it pertains to pumps, air-conditioning or air handling equipment.

THIS ITEM WAS REMOVED FROM THE AGENDA

B. [17-1191](#) Ordinance 2017-22, first reading, modifying the City-Wide Fee Schedule for Fiscal Year 2017-2018.

A motion was made by Commissioner Luke, seconded by Commissioner McDowell, to read Ordinance No. 2017-22 by title only. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

City Clerk Adkins read Ordinance No. 2017-22 into the record by title only and City

Manager Lear provided an overview. There was no public comment.

Discussion ensued: (1) it was noted that a request that was made at a Workshop to add underbrush being included in land clearing was not made part of the City-Wide Fee Schedule; (2) following a question, it was stated that prior to second reading, the Ordinance will be clarified to reflect that the Police Special Detail for events will be charged at \$43 per officer, per hour; (3) it was requested to add "seasonal" to the Utilities section for the reinstatement of existing services for normal hours and after hours; (4) subsequent to a question, clarification was provided that the reduction in Building Fees was not because the service does not cost that much, but because it was based on the Fund Balance available to offset the cost of the permit; (5) it was stated the Commission can authorize a reduction in the reinspection fees which will be reflected in the second reading of the Ordinance.

A motion was made by Commissioner Luke, to continue Ordinance No. 2017-22 to the July 25, 2017 Commission Regular Meeting for second reading, including adjustment for first Building Reinspection Fees. The motion failed for lack of a second.

A motion was made by Commissioner McDowell, seconded by Commissioner Luke, to continue Ordinance No. 2017-22 to the July 25, 2017 Commission Regular Meeting for second reading, with the following changes, the Police Special Detail: \$43 per hour, per officer; under Utilities: adding the word "seasonal" in front of reinstatement of existing service for normal hours and after hours; and the Building first Reinspection Fee to be cut by 50%.

It was suggested to provide a 50% rental discount for the Achieve Anything and Not-for-profit entities.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner McDowell, to amend the motion that the Schedule in Section H, Facility Rental Fees, be reduced 50%; with an additional 20% reduction for military and non-profits.

Discussion ensued: (1) it was suggested to review data from Sarasota County relating to facility rental fees and compare what we have to what they offer; (2) after a brief discussion, it was suggested to allow one special discounted price but not double up on the same facility rental; (3) following questions, it was stated that: [a] the facility rental fees were designed to include staff time to set up and/or take down and are specific to the facility; [b] it was stated that the \$30 overtime rate starts after regular operating hours; [c] discounts only apply to the actual rental of the space; not staff time or Audio-visual equipment; [d] barricades are considered an additional set up but, historically, that fee has not been charged; (4) it was stated that an analysis of facility operations show a shortfall on staff hours just to cover regular facility operations for the buildings and parks, and thus overtime staff hours are not available to accommodate an additional, regular Sunday rental reservation; (5) clarification was provided that, due to the recession, when the Morgan Center was opened, Parks & Recreation staff was not increased, and since then, has been increased slowly as the budget allowed; (6) Commissioner Hanks was not in favor of severe reductions in fees; (7) Commissioner Luke stated that the question is whether to leave the fee reduction at 50% or to approve the motion to reduce it more, knowing that when the survey comes back, it may recommend an increase in fees; (8) Mayor Yates will not support the amendment because the Ordinance did not include reductions in the Parks & Recreation rental fees and there is not enough information to make a decision on that without it having a counter-productive impact.

A vote was taken on the motion to amend and the motion failed by the following

vote with Mayor Yates, Commissioners Hanks, and Luke dissenting for reasons stated. Commissioner McDowell did not provide a reason for dissenting:

Yes: 1 - Vice-Mayor Carusone

No: 4 - Mayor Yates, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

A motion was made by Commissioner McDowell, to amend the motion, to direct staff to come up with numbers and pros and cons of reducing the fees by 50% with an additional 20% discount to veterans and 501C3's before second reading. The motion was subsequently withdrawn.

A vote was taken on the main motion, to continue Ordinance No. 2017-22 to the July 25, 2017 Commission Regular Meeting for second reading, with the following changes, the Police Special Detail: \$43 per hour, per officer; under Utilities: adding the word "seasonal" in front of reinstatement of existing service for normal hours and after hours; and the Building first Reinspection Fee to be cut by 50%. The motion carried by the following vote with Vice-Mayor Carusone dissenting for reasons previously stated:

Yes: 4 - Mayor Yates, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

No: 1 - Vice-Mayor Carusone

5. GENERAL BUSINESS:

A. [17-1187](#)

Discussion, and possible action to terminate the Interlocal Agreement between the City of North Port and the University of Florida regarding the rewriting of the City's Unified Land Development Code (ULDC), and that the Unified Land Development Code rewrite project go through the City's Request for Proposal (RFP) process to hire a professional consultant to complete the project.

City Manager Lear provided an overview of the agenda item. There was no public comment.

Discussion ensued: (1) it was stated that direction is requested to: [a] terminate the Interlocal Agreement; and [b] issue a Request for Proposal (RFP); (2) it was confirmed that the City has received all the information from the University of Florida (UF) and they have been paid for services rendered; (3) after the Notice of Termination is received, the City and the University of Florida will resolve any outstanding contractual details; (4) a review of the contract with staff is needed before any breach of contract is determined and a Notice of Termination does not waive any rights or remedies under the contract; (5) following a question, staff is requesting direction regarding issuing an RFP for the Unified Land Development Code re-write, that will include a new scope of services where additional services may be assigned as directed by the Commission; (6) it was noted that the work that the University of Florida has completed needs to be taken into consideration.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner McDowell, to terminate the University of Florida Interlocal Agreement. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

A motion was made by Vice-Mayor Carusone, seconded by Commissioner McDowell, to bring back an RFP for a professional consultant to re-write the ULDC with the scope to be brought back to the Commission for approval. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

B. [17-1194](#)

Discussion and possible action regarding appointment of a Member to the Planning & Zoning Advisory Board.

City Clerk Adkins provided an overview of the Agenda Item. Mr. Metzger was present and provided brief comments. There were no questions or comments by the Commission and no public comment.

A motion was made by Commissioner Luke, seconded by Vice-Mayor Carusone, to appoint John Metzger as a member to the Planning & Zoning Advisory Board. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

Recess 2:33 p.m. - 2:49 p.m.

C. [17-1155](#)

Discussion and direction regarding the City's position on the disposition of the Orange Hammock property.

City Manager Lear provided an overview of the agenda item and Vice-Mayor Carusone presented a brief history of the property and the importance of obtaining the water rights in the area.

Discussion ensued: (1) it was noted that the previous Commission issued a Letter of Support to conserve 100% of the Orange Hammock Ranch and Mayor Yates, Commissioners Luke and McDowell remain dedicated to that position; (2) concern was expressed that 100% will not be conserved; (3) it was stated that several options may come forward after the purchase is completed regarding the potential disposition of the land; (4) concern was expressed that the Southwest Florida Water Management District (SWFWMD) has been clear that they reserve the ability to surplus a small area of the southwest portion of the property to help fund the overall acquisition; (5) it was stated that Sarasota County Administrator Harmer emailed that only 330 acres can be developed of the surplus 875 acres.

Representative Poulton from SWFWMD stated: [a] the sale has not happened and it is being negotiated now but it is hoped to surplus about 800 acres; [b] input is welcome from the City as well as other entities; [c] the area chosen to "surplus" was by the interstate because it is hard for SWFWMD to manage; [d] it was unknown whether SWFWMD has plans to obtain the water rights on the property.

PUBLIC COMMENT

Christine Johnson, Justin Willis, Victor Dobrin: preserve 100% of the area and the water rights.

A motion was made by Vice-Mayor Carusone, to direct staff to look into the purchasing of the 800+ surplus acres along with reserving the water rights for the entire Orange Hammock. The motion failed for lack of a second.

Subsequent to a question, it was stated no further action is needed.

Commissioner Hanks is not against the 875 surplus acres being sold but is concerned regarding North Port's consideration to purchase it. He suggested that the owner donate the land to the City.

Vice-Mayor Carusone articulated a concern that through mitigation fees, preserved land that was reserved as conservation, can be developed and the City will not be able to restrict what is developed.

D. [17-1157](#)

Contract No. 2017-22 with Poole & Kent Company of Florida for the Wastewater Storage Improvements Project in the amount of \$1,274,324.45.

City Manager Lear and Utilities Director Newkirk provided an overview of the agenda item. There was no public comment.

Discussion ensued: (1) subsequent to a question, clarification was provided that a two million gallon water storage tank replaced the 400,000 gallon tank, which will now be used as a digester which will increase storage capacity from 8 days to 40 days, and will reduce the amount of sludge hauled off site, resulting in a cost savings; (2) it was stated that the smaller tank was built in the 1950s, is structurally sound and is expected to last another 50 years; (3) after a question, clarification was provided that a fine bubble diffuser will be added to the digester tank to increase the health of the bugs that digest the waste product.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Hanks, to approve Contract No. 2017-22 Wastewater Storage Improvements Project with Poole & Kent Company of Florida as presented by staff. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

E. [17-1137](#)

Contract No. 2017-35 with E.T. MacKenzie of Florida, Inc. for the MCWTP Pipeline Improvements Parts 1 and 2 in the amount of \$892,680.00 plus a contingency amount of \$89,269.00 for a total amount of \$981,949.00.

Utilities Director Newkirk explained that this project is in the Utilities Master Plan and will increase the potable water pipeline leaving the plant from 10-inches to 24-inches. There was no public comment.

Following a question, it was stated that this improvement will be sufficient until the new plants are built in the West Villages and in Panacea.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Hanks, to approve Contract No. 2017-35. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

F. [17-1179](#)

Review and Approve Draft Scope of Services for Warm Mineral Springs Park Master Plan.

City Manager Lear and Interim General Services Interim Director Pfundheller presented an overview of the draft of the Scope of Services for the Warm Mineral Springs Park Masterplan.

Discussion ensued: (1) it was stated that the Scope of Services contains staff's recommendations for consideration and the community meetings will provide additional feedback regarding what will and will not be ultimately included in the Park; (2) after a suggestion was made to include a historical-type area, it was stated that the Scope of Services could be modified to include that, or it may be discussed during the charrettes; (3) clarification was provided that the City can issue a Request for Quote (RFQ) or utilize the current contract with DMK; (4) following questions, it was stated that: [a] an answer was received yesterday, that the Bureau of Historic Preservation's recommendation was to keep the buildings together but the City's request was forwarded to obtain additional professional opinions, and a reply should be received by July 19, 2017; (5) clarification is needed in a motion that the Master Plan is for the entire property with placement designations of the amenities; (6) it was suggested to use an RFP to hire the most appropriate entity to perform the work; (7) it was noted that the amphitheater structure will be built to compliment the surrounding architecture; (8) a list of stakeholders will be provided by the City as well as the Commission; (9) a brief conversation ensued regarding the consultant meeting with the Commission individually vs. in a Commission meeting; (10) it was suggested that costs for maintaining the Park as well as revenue stream options be included in the Master Plan to enable the Park to be financially self-sustainable; (11) it was suggested to include stakeholders who have expertise in environmental issues; (12) it was requested to hold a third charrette on a Saturday and include a tour of the site; (13) adequate buffering was requested between the Springs and the camping areas, amphitheater etc.

PUBLIC COMMENT

Robert Zabler, Pete Pedersen: Warm Mineral Springs plans.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Luke, to approve the Scope of Services for Warm Mineral Springs Park Master Plan; to include the entire complex with buildings included; making sure the desired amenities include archaeological and historical aspects, not only of North Port but American Indians; that a third charrette be held with one being held at the Springs; and that there is a revenue neutral component suggesting fees.

Discussion ensued: (1) concern was expressed regarding making the international tourism and the therapeutic aspect of the 20-acre parcel revenue neutral and the 60-acre portion as revenue neutral as possible; (2) it was stated that staff can bring back revenue options with various price points to consider: [a] revenue neutral; [b] to recuperate 80% of costs; [c] other options.

Mayor Yates passed the gavel to Vice-Mayor Carusone.

A motion was made by Mayor Yates, seconded by Commissioner Luke, to amend the motion to also provide other pricing options, price points for the Warm Mineral Springs. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

Vice-Mayor Carusone passed the gavel back to Mayor Yates and Vice-Mayor Carusone called the question.

There was a vote on the main motion, as amended, to approve the Scope of Services for Warm Mineral Springs Park Master Plan; to include the entire complex with buildings included; making sure the desired amenities include archaeological and historical aspects, not only of North Port but American Indians; that a third charrette is held with one held at the Springs; that there is a revenue neutral

component suggesting fees; and to also provide other pricing options, price points for the Warm Mineral Springs The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

A discussion ensued regarding the remaining order of the Agenda Items.

A motion was made by Commissioner Luke, seconded by Commissioner McDowell, to follow the Agenda as originally published. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

G. [17-1195](#)

Fire and Police Union Contracts

City Manager Lear presented an overview of the agenda item.

Discussion ensued: (1) subsequent to a question: [a] confirmation was provided that until a new agreement is reached, both contracts remain in place; [b] after a letter is sent to the unions requesting new negotiations, it is anticipated that discussions could start mid-July or August; [c] the American Federation of State County and Municipal Employees (AFSCME) negotiations are also at an impasse, and they have reached out to start negotiations on the next contract; [d] an Executive Session will be needed prior to negotiations on all three contracts; [e] information regarding tuition reimbursement for new hires will be provided to the Commission; [f] it is anticipated that the Salary Compensation Study information will be provided at the Executive Session; [g] the last Commission direction was to open only the wage section of the contracts but the entire contract can be open instead; (2) following a comment, clarification was provided concerning a Shade Meeting and when litigation is finalized, the recorded record becomes a public document. However, no decisions are made during a Shade Meeting; (3) after a concern, it was stated that both parties must agree to reopen negotiations on the entire Contract; (4) it was suggested to do a hybrid determination to re-open the entire Contract and at the same time work on a successor Agreement; (5) confirmation was provided that if an agreement is not reached on the current Contract, it can be closed with no changes, and work on the upcoming Contract may continue; (6) it was hoped that the new Contract will become effective as soon as it is negotiated.

PUBLIC COMMENT

Justin Willis: focus on the benefits of employees.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Luke, to have a reopening request letter sent to the respective unions within the next 30 days, that a negotiation for reopening the respective contracts in totality for a successor Agreement, which will replace the Contract that is in place. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

H. [17-1174](#)

Discussion regarding appointing a Voting Delegate for the 91st Annual Florida League of Cities Conference.

City Clerk Adkins requested that the Commission appoint a voting delegate to attend the Florida League of Cities Annual Conference, August 17-19, 2017. Mayor Yates, Vice-Mayor Carusone and Commissioner Hanks will attend. There was no public

comment.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Hanks, to appoint Mayor Yates as the Voting delegate for the 91st Annual Florida League of Cities Conference with Vice-Mayor Carusone as the alternate. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

I. [17-1201](#)

Discussion of market position philosophy for the compensation and classification study.

City Manager Lear and Human Resources Director McDade provided a brief overview of the agenda item and stated that it is anticipated that results are expected back by Mid-August. There was no public comment.

Discussion ensued: (1) discussion areas included: [a] lag with the market salaries, align with market salaries or lead market salaries; [b] wage adjustment increases; and [c] targeted comparable market areas; (2) it was stated that Evergreen Solutions, LLC will propose a way to address hiring new employees within an optional salary range formula in addition to addressing existing employees pay scale positions; (3) mid-point of a salary range is market and flexibility is preferred to be able to hire up to market; (4) it was suggested to allow to hire either within the aligned amount or the lead amount; (5) clarification was provided that the hiring range for a new hire is typically somewhere between the beginning of the pay range to the middle of the pay range, with the middle being current market rate; (6) Mayor Yates disagreed with a proposal to adjust current employees beyond the midpoint salary range when a new hire is granted a beginning salary beyond the midpoint due to his/her high qualifications; (7) it was stated that the hiring range is a separate conversation at a later date; (8) following a question, it was stated that the study focused on a salary review, not a combination of a salary and benefits package, however a separate study is being done for benefits with a report forthcoming to the Commission; (9) it was stated that for five years, the general practice has been to hire new employees at the minimum level and may have been implemented due to budgetary concerns; (10) it was suggested to stay aligned with the market and consider other benefits options when the data comes back, that may allow the City to lead the market up to a certain percent; (11) at the Workshop, a spreadsheet will be provided with a pay band that will allow input amounts to show various comparable outcomes with the market rates; (12) the report will also include budgetary costs for the ranges; (13) it was requested to include more data from comparable communities.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Luke, to have Evergreen Solutions come back with a standard of leading the Market and to allow for a multitude of ways to lead that market with a combination of benefits, longevity pay, etc., to be presented to the Commission. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

Recess 5:24 p.m. - 6:01 p.m.

4. PUBLIC HEARINGS:

TIME CERTAIN 6:00 P.M. -(at 6:00 p.m. the Public Hearing for Resolution No. 2017-R-11 will begin. At the conclusion of this item the Commission will proceed with any items that were not previously completed.)

C. [17-1126](#)

Resolution No. 2017-R-11, Petition No. SPX-14-158, Joseph Neuman on behalf of Sunshine State Pups, LLC is requesting a special exception to allow for the use a puppy kennel as an accessory use in the Agricultural (AG) Zoning District. The subject property is located at 1668 Tropicair Boulevard, Parcel Identification Number 0937013813 (Section 1, Township 39 South, Range 21 East) and contains ±3.53 acres (Quasi-Judicial). THIS ITEM WILL START AT A TIME CERTAIN – 6:00PM

Acting City Attorney Mooney-Portale replaced Interim City Attorney Slayton to represent the City. Mayor Yates opened the Public Hearing and City Clerk Adkins read Resolution No. 2017-R-11 into the record by title only.

City Clerk Adkins, as a Notary Public for the State of Florida, swore in all those wishing to provide testimony on the Public Hearing Agenda Item.

Attorney Mooney-Portale began with three procedural disclosure items to be entered into the record:

(1) Florida's Conflict of Interest Laws. The Commission reported having no conflict of interest with respect to the Application and the record reflects that no one has a conflict of interest as defined by Florida Law.

(2) Exparte communications were disclosed by the Commission: Commissioner Hanks in the form of emails, copies of which were forwarded to the City Clerk. He stated he can be fair and impartial in making a decision today based upon the evidence presented to him. Commissioner McDowell in the form of emails, copies of which were forwarded to the City Clerk; citizens who approached wanting to discuss the item were interrupted with a statement she cannot discuss the matter; she listened to the Planning & Zoning Advisory Board Meeting wherein the item was discussed; Face Book Messenger with a PZAB Member whom she told she cannot discuss the case and she forwarded that thread to the City Clerk. She stated she can be fair and impartial in making a decision today based upon the evidence presented to her. Vice-Mayor Carusone in the form of emails, and Face Book Messages both of which were forwarded to the City Clerk and Legal Department. She stated he can be fair and impartial in making a decision today based upon the evidence presented to her. Commissioner Luke in the form of emails, and Face Book Messenger, which were forwarded to the City Clerk; spoke with a member of the Planning & Zoning Advisory Board until he started talking about the case. She interrupted him and cautioned him not to continue further. She also talked about it years ago when she was not a Commissioner. She stated she can be fair and impartial in making a decision today based upon the evidence presented to her. Mayor Yates in the form of emails, which were forwarded to the City Clerk and any received today will also be forwarded; received two phone calls which were forwarded as well; and listened to the Planning & Zoning Advisory Board Meeting wherein the item was discussed. She stated she can be fair and impartial in making a decision today based upon the evidence presented to her.

(3) Aggrieved or Adversely Affected Party Status. It was reported that the City received a

request on July 6, 2017 at 12:12 p.m., from Mr. William Conrad. Under the City Code, that falls outside of the five business-day requirement and it is Attorney Mooney-Portale's recommendation that the Commission does not grant him that status. Doing so will be in violation of the specific provisions of City Code.

Attorney Mooney-Portale stated that this is a quasi-judicial proceeding and a decision must be based upon: (1) whether due process was afforded to the Applicant; (2) whether the decision rendered by the local governing board was based upon competent, substantial evidence; (3) whether the correct law was followed.

Following a question, Attorney Mooney-Portale stated that any decisions made must comply with the City's Comprehensive Plan and the Unified Land Development Code. The recommended advisory opinion by the Planning & Zoning Advisory Board is not binding or obligatory in any way on the Commission. This will be a full, evidentiary hearing, with a decision based on competent, substantial evidence.

PETITIONER

Attorney Russell, representing Mr. and Mrs. Neuman and Sunshine State Pups, in this Petition, requested a Special Exception for a kenneling toy-size puppies as an accessory use in an Agricultural Zoning District. Details of the subject property were entered into the record in which it was stated that the property is owned by Michael Schoeff, who rents the property to the Applicant. A brief historical background was provided of the Special Exception request from the first submission November 10, 2014 to the Commission's denial of the Request on April 27, 2015. Mr. Neuman filed a request to participate in the Florida Land Use and Environmental Dispute Resolution process to be presented to a Special Magistrate. The Special Magistrate found that prohibiting the Special Exception was unreasonable on the subject property and the only substantial and competent evidence provided was that of the City Planner, who found that the proposed land use was acceptable. At that time, the Special Magistrate's recommendation that the Special Exception be granted was rejected by the City Commission. Mr. Neuman then filed a Petition for Writ of Certiorari in the 12th Circuit Court. On November 15, 2016, the Circuit Court found that the City Commission did in fact deny the petitioner's due process rights and remanded the matter back to the City Commission and ordered the Commission to re-hear the petition following proper procedures. On December 13, 2016, the City Commission remanded the petition back to the Planning & Zoning Advisory Board to re-start the Special Exception process. On June 28, 2017 the Planning & Zoning Advisory Board heard the petition and voted to recommend approval with conditions. Subsequent complaint details related to the the kennel, as well as inspection reports from the Sarasota County Animal Control, North Port Animal Control and the Florida Department of Agriculture were entered into the record.

WITNESS JOSEPH NEUMAN

Mr. Neuman provided the following information: (1) his home address; (2) education and background; (3) the homeowner granted permission to file the Special Exception Application; (4) the operation of the business and the kennel system were explained; (5) the goal is to exemplify of what a small e-commerce business can be; (6) the operation is a fit for the Agricultural Zoning District and the density and intensity of use is consistent with the City's Future Land Use Map Plan; (7) the proposed use will not be detrimental to the area, prosperity etc., of the neighborhood; (8) the use is harmonious with the character of other uses in the neighborhood; (9) the height of the structure is compatible with the neighborhood and the parcel of land is adequate for the structure; (10) there is adequate screening for buffering for light or noise from the structure; (11) there is no loading or refuse area and the biggest truck that services the location is a UPS vehicle; (12) there is no external signage, nor extraordinary exterior lighting; (13) traffic flow

averages 20 cars or less during a month; (14) there is sufficient access for fire and/or emergencies; (15) traffic flow on surrounding roadways is not adversely affected; (16) a private well provides adequate potable water and does not affect neighbors; (17) a standard ditch and mound system is used for a wastewater and drainage on the exterior of the home that will wrap around the perimeter of the kennel; (18) the kennel will not cause or intensify flooding on neighboring property; (19) he read Staff's Report with recommended conditions and agrees to abide by and adopt those conditions.

CROSS EXAMINATION

Questions ensued: (1) there are no current on-going inspections of the property or conditions; (2) the pups are kenneled on site until purchased online; (3) the Special Exception Request is to continue the business legally; (4) traffic flow accounts for pickup purchases.

For purposes of clarification, it was stated that additional supplemental documents were distributed to the Commission Friday through Sunday and Attorney Russell had no objection to those documents being included in the record.

Cross examination continued: (1) Sunshine State Pups, LLC is the business name which will be operating on the property, dba/Florida Pups; (2) Mr. Neuman explained various reasons why separate applications were submitted under different business names; (3) clarification was provided that Florida Pups, LLC, owned by Mr. Schoeff, may have requested an extension and therefore did not file an annual report for 2017; (4) a return email address of mike@affordablepups.com may have been included in error on the application from Mr. Neuman; (5) the difference was explained between a registered agent and a business owner and Mr. Neuman is the registered agent and manager for Sunshine State Pups, LLC; (6) Mr. Michael Schoeff is the registered agent for Florida Pups, LLC with Mr. Neuman as the manager, but is not operating at the Tropicaire site; (7) Mr. Neuman stated he is not a canine breeder and Mr. Schoeff has bred dogs but only his private dogs and is not a professional breeder; (8) after it was shown in the original Application documents that Mr. Schoeff was listed as a breeder, clarification was provided that the information is two years old and outdated; (9) information on the Application would have been updated but staff requested to update the corporate status but only to resubmit the Application; (10) it was stated that Puppy Avenue Inc., owned by Mr. Schoeff and located in Ohio, facilitates the sale of the pups to Mr. Neuman, who buys them from that corporation; (11) veterinarian care is provided off-site when needed; (12) as a web-based e-business operation, Mr. Neuman's business does not advertise by signage, no parking lot, no high-impact, and no business hours; (13) it was confirmed that the number of dogs was reduced from 21 to 18 as one of the staff's Conditions of Approval to which the Applicant agreed; (14) the square footage of the kennel could hold a maximum of 26 pups; (15) currently there are three kenneling systems and each kenneling system has three kenneling units and each kenneling unit holds 2 dogs; (16) one kenneling system was removed at the City's request after May 22, 2014.

For the record, Attorney Russell provided the following documents: (1) an email string from Wendy Scott and Animal Control Office NPPD was submitted by Attorney Russell as Exhibit A; (2) Sarasota County Sheriff Report Animal Services Section Report was submitted by Attorney Russell as Exhibit B; (3) Florida Department of Agricultural Law Enforcement report was submitted by Attorney Russell as Exhibit C; (4) the updated information from SunBiz.org, regarding the fictitious name registration was provided by Attorney Russell and was distributed to the Commission as Applicant's Exhibit D.

STAFF TESTIMONY

Zoning Coordinator Willette-Grondin, representing the City staff, provided clarification

pertaining to the original Application that was voided on November 10, 2014 due to incomplete submission of documents. The next Application was corrected and submitted on February 2, 2015. Staff was directed to reboot the process with the original Application and as part of staff's due diligence, confirmation was received that the corporate documents remained valid and the Annual Report was restated as of May 31, 2017. All of the review of the Application for a Special Exception is for Sunshine State Pups, LLC. Re-butting a comment, it was stated that the reduction of puppies from 21 to 18 was part of staff's Conditions of the staff report and did not constitute an approval of the Special Exception. Petition No. SPX-14-158 was advertised in a newspaper of general circulation on May 13, 2017, in accordance with Unified Land Development Code (ULDC) Chapter 53, Part IV, Article 22, Section 53-258. Fifty-four Notices of the Public Hearing were mailed to property owners within the 1,320-foot buffer as required by City Code on May 12, 2017. One was returned because mail service was suspended and one property owner sent in a notice of protest, which is Exhibit P in the Staff Report. It was noted that a timeline of events was stated previously by the Applicant. Exhibit I consists of Ordinance 2015-24, which adopted the Sarasota County Animal Ordinance. Exhibit J consists of the Sarasota County Ordinance relating to animal control, including a codified text of Chapter 14 of the Sarasota County Code. The three key facts of review were: (1) the use for a kennel as an accessory use in the Agricultural Zoning District; (2) whether this qualifies as a commercial or home-based business, and does it meet the requirements of a home-occupation; (3) how does the Sarasota County Ordinance apply since it was adopted by the City. The ULDC, Chapter 53-25(b) and (b)(1), which list the principal agricultural uses and structures within the Agricultural Zoning District were stated. Special Exception Permit requirements were stated. The subject's location and site plan were projected along with a short review of ULDC historical changes. It was noted that in the 2010 re-write of the ULDC, kennels were removed as a use approved by a Conditional Use Permit--they were neither permitted, nor prohibited, thus would fall under a Special Exception; and there is no definition of "commercial business" as it applies in the Agricultural Zoning District.

Subsequent to a question, it was stated that a Conditional Use Permit/Special Exception (CUP/SPX 10-053) was granted to another kennel located in the Estates because it was submitted prior to the adoption of the ULDC re-write on June 14, 2010. The address was stated as 6756 North Biscayne Drive.

Staff Testimony continued: Addressing point #2, the requirements of a home-occupation business were described. Addressing point #3, Sarasota County's animal control Ordinance was cited regarding how it applies to the Applicant's request for the Special Exception, including a reference to Chapter 53 of the City's ULDC. Staff is requesting Commission to consider this request, to allow as an accessory use, the kenneling of the puppies, for the kenneling use only. If the Special Exception is granted, it shall remain with the Applicant, Joseph Neuman, on behalf of Sunshine State Pups, LLC; it does not transfer with ownership and it shall not run with the land. Details of the kennel structure conditions, its occupants and outdoor exercise areas were explained. Staff outlined 26 additional Conditions of Approval of the Special Exemption.

Recess 7:58 p.m. - 8:08 p.m.

COMMISSION QUESTIONS TO STAFF

Discussion ensued: (1) all applications must receive permission from the property owner; (2) according to the Florida Farm Act, kenneling is not a permitted agricultural use; (3) the definition of kenneling includes "for the sale"; (4) Sunshine State Pups, LLC does not currently hold a City license; (5) the use of the kennel is the piece that requires a Special Exception Permit and the sale of animals is what allows them to be considered a home occupation provided all criteria for a Home Occupation Permit is met; (6) concern was

expressed that further detail is needed in defining home occupation as a hobby or a commercial business; (7) it was unknown whether Mr. Neuman was required to be registered with the Florida Department of Business and Professional Regulations; (8) the Special Exception does not transfer with the land and stays with the Applicant; (9) typically, after Commission approval of the Resolution, the Development Order or Order of Approval can provide specific Commission direction regarding details and parameters of the Special Exception; (10) compliance monitoring is done by Sarasota County regarding the welfare of the animals, City staff will review the Special Exception every two years; (11) by City Code, the conditions imposed are [a] that the Special Exception shall remain with the Applicant, does not transfer with ownership, and does not run with the land; [b] no animal shall be allowed to be raised in the Agricultural Zoning District without the provision of an on-site supply of water; and [c] the engineering Condition of a berm area to be provided and other requirements by the Administrative Code. Because the use is not prohibited nor permitted, additional restrictive Conditions specific to the use may be added as the Commission directs; (12) referencing Exhibit F, Section 53-26(4) of the Unified Land Development Code (ULDC), "Sale of new or secondhand merchandise of whatsoever type or kind," it was stated that there is no definition in City Code of what constitutes merchandise in the Agricultural Zone and the Commission may consider the common definition as well as Staff's interpretation of the Code that they apply on a regular basis; (13) the Special Exception Application stated that all its e-commerce sales are online; (14) pending approval of the Resolution, enhanced depictions of the site will be attached to the official document; (15) Stormwater Manager Wong's condition to include a berm did not indicate its size or placement; (16) following a concern, Acting City Attorney Mooney-Portale suggested to recognize that the Sarasota County Ordinance applies in Exhibit A, Condition #25, but additional language could be added that any subsequent City Code of equal applicability would prevail; (17) the City's Code will apply to issues outside the scope of the Sarasota County Animal Control Ordinance; (18) it was stated that according to Condition #26, the Special Exception Permit will be reviewed every two years for compliance; (19) the ULDC Section 53-25, defines the permitted uses for a home occupation; (20) if a use is specifically prohibited in any zoning district, a permit will not be issued; (21) it was confirmed that a Business Tax Receipt and a home occupation permit are two separate things; (22) the Special Exception Permit is for the kennel and the sale of puppies falls under the Home Occupation Permit as the e-commerce component; (23) clarification was provided that the property is not being rezoned, but the City is allowing a use to run with the applicant, not the land; (24) based on the legislative history evidence provided in the backup material of the 2010 legislation relating to the Agricultural Zoning District, there is no sunset language to sunset existing conditional uses; (25) rental properties are not currently regulated by the City but that may be a future Commission discussion item; (26) in addition to a commercial kennel, a non-commercial kennel would also need a Special Exception Permit; (27) except for cottage food products, a home occupation business cannot have retail sales on the premises; (28) not all home-based businesses are considered e-commerce/web-based and the e-commerce element within this Special Exception Permit request is specific to this application.

CROSS EXAMINATION

Questions ensued by Attorney Russell to Zoning Coordinator Willette-Grondin: (1) she holds an Associate's Degree in Agency Business Administration, an Associate's Degree in Customer Service; (2) has worked with the City of North Port for 13 years; (3) has a background in Commercial Insurance Regulations; (4) has taken legal courses in land use planning; (5) has worked in the Planning Division since October, 2006; (6) this is Ms. Willette-Grondin's first Special Exception Permit Application; (7) this Application was processed under the supervision of Planning Manager Norton; (8) the Special Exception Application is for the kennel as an accessory use.

Staff was requested to confirm its professional opinion regarding the following findings:

(1) The granting of the special exception will not adversely affect the public interest, health, safety and general welfare. Pursuant to Chapter 53-Zoning Regulations, Part 1-General Provisions, Section 53-3-General Requirements, Subsection Q. of the Unified Land Development Code, it states "If the use is not expressly permitted or prohibited in a zoning district, it shall be required to apply for a special exception permit." The property is zoned Agricultural and the use of a kennel is neither permitted nor prohibited, therefore a Special Exception is required. The site is approximately \pm 3.53 acres and includes a single-family residence as the principle use of the subject property. Since the kennel use is subordinate and accessory to the principle use of a single-family residence, there is sufficient space for the proposed ninety-six (96) square-foot kennel without adverse impact to the public interest, health, safety and general welfare. Staff concludes that this criterion is met;

(2) That the specific requirements in the Schedule of District Regulations (Part 2) governing the individual special exception, if any, have been met by the petitioner. Pursuant to Chapter 53-Zoning Regulations, Part 2. Schedule of District Regulations, Article II. AG Agricultural District, Sec. 53-27. Special exceptions of the Unified Land Development Code, it states, "Any use not specifically permitted and is not specifically prohibited in this zoning District may file for a special exception permit in accordance with Article XXII of this chapter, provided that the use applied for contributes to the intent of the zoning district as stated in the City's Comprehensive Plan and this Unified Land Development Code". In addition, under Article II. AG Agricultural District, Section 53-24-Intent it states, "It is intended by the use of these districts to retain, insofar as desirable and practicable, the open character of the land. To that end, permitted and permissible uses are basically limited to conservation, agricultural, very low-density residential development, recreation and, with certain limitations, other uses not contrary to the character of these districts. AG Agricultural Districts provide for and encourage light agricultural activities." According to Article II., Sec. 53-25 of the ULDC, the permitted principal uses and structures under subsection B. states, Agricultural uses, such as farming, dairying, pasturage, agriculture, the keeping of domestic pets, horticulture, floriculture, aquaculture, silviculture, animal and poultry husbandry and necessary accessory structures and uses incidental to agricultural activity." The single-family dwelling which is the applicant's place of residence and the primary structure on the property is permitted by right in the Agricultural (AG) zoning district. They eat, live and sleep in the residential structure which is their home. The request for a special exception for a puppy kennel as an accessory use for the keeping of domestic pets is consistent with the zoning district. Staff concludes that the Special Exception for the accessory use of a puppy kennel if approved, can meet this criterion with certain limitations and conditions as previously stated on the record;

(3) The proposed use shall be consistent with the intent, goals, objectives, policies and programs of the City of North Port Comprehensive Plan and the intent of the zoning district as defined in this Unified Land Development Code for the area in which the property is located. The future land use of the property is Agricultural, Estates. These lands are designated for agricultural related uses and very low density residential development in order to retain the open character of the land. The land is zoned as Agricultural (AG) Zoning District. The kennel use is neither expressly permitted or prohibited, however the keeping of domestic pets is consistent with the zoning designation and with the Comprehensive Plan. In addition, the kennel use is an accessory use to the principle use of a single-family residence which is permitted by right in this zoning district and future land use. Home occupations are a permitted use in residential and agricultural zoned districts. Staff concludes that this criterion is met;

(4) The density or intensity of the proposed use shall be consistent with the intended future use of the designated land use area in which the property is located, in accordance with the provisions of the Future Land Use Plan Map contained in the Comprehensive. The future land use is Agricultural, Estates which allows for agricultural related uses

including the keeping of domestic pets. The subject property is approximately ±3.53 acres and any structure will need to meet the maximum lot coverage, minimum setback requirements, and maximum building height for the Agricultural (AG) zoning district. The proposed kennel as an accessory use is ninety-six (96) square feet, therefore the use of kennel as an accessory use will not increase the density or intensity and is consistent with the intended future land use. Staff concludes that this criterion is met; (5) The proposed use, singularly or in combination with other previously approved special exceptions, must not be detrimental to the health, safety, welfare, morals, order, comfort, convenience, appearance or prosperity of the neighborhood or adjacent uses; and shall be an economic benefit to the economy of the City. There is currently an approved special exception for a like use in the Agricultural (AG) Zoning District for a dog boarding kennel which was approved by Commission in 2010 and is still in business. The proposed special exception for Sunshine State Pups is approximately six and one half (6 ½) miles as the crow flies from the existing kennel and the 3.53-acre site can accommodate the ninety-six (96) square foot kennel in manner that is acceptable to the existing neighborhood with the appropriate conditions attached to the special exception if approved, would not be detrimental to the health, safety, welfare, morals, order, comfort, convenience, appearance or prosperity of the neighborhood or adjacent uses. Based upon the Staff's interpretation of Sarasota County Ordinance 2015-089, the applicant appears to be an authorized "hobby breeder" as defined by that Ordinance. Staff concludes that this criterion is met; (6) The intensity of the proposed use shall be harmonious with the character of other uses in the neighborhood. The surrounding uses include vacant land to the north, vacant land to the immediate east, single family residences to the south, drainage and single family residences to the west. The primary use of the subject property is residential, the proposed kennel as an accessory use is a ninety-six (96) square foot structure. As there are currently kennels as an accessory use in the Agricultural (AG) zoning district as well as agricultural related uses, the intended use of a kennel as an accessory use to the single-family residence is in harmony and in character with the neighborhood. Staff concludes that this criterion is met.

Subsequent to quoting some of the criteria which the Applicant must meet, Attorney Russell stated he will be satisfied if the remaining criteria items could be stated, with staff simply confirming that the criteria has been met.

Acting City Attorney Mooney-Portale stated that the Applicant has full party rights, under the quasi-judicial Ordinance, including the opportunity to cross-examine the witness, to afford the full due process to them under the City's Code, and recommended to allow Attorney Russell to continue.

Confirmations continued: (7) The height and orientation of any proposed structure(s) shall be compatible with existing neighboring structures and uses. Staff concludes that this criterion is met with the testimony that is part of the record and part of the Staff Report; (8) The subject parcel shall be adequate in shape and size to accommodate the proposed use and provide for appropriate separation between neighboring uses. Staff concludes that this criterion is met; (9) The proposed use shall be adequately screened and buffered to effectively separate traffic, light and noise from existing or intended nearby uses; (10) The loading and/or refuse areas shall not impose negative visual, odor or noise impacts on abutting uses or thoroughfares. Based on the information the Applicant has provided that no additional loading or refuse areas are proposed and staff concludes that this criterion is met; (11) The size and location of proposed sign(s) shall be in compliance with Chapter 29, Sign Regulations of these regulations, and shall be compatible with the character of the existing neighboring uses. Staff's response: there are no signs proposed; staff is recommending no signage or advertising as part of the Conditions of Approval. Staff concludes that this criterion is met; (12) Exterior lighting shall be

harmonious with the character of existing neighboring uses, in terms of glare, and required foot-candles. There is no outdoor lighting shown on the sign plan, however, pursuant to Chapter 37, Section 37-56, the illumination projected from any property to a residential use, shall at no time exceed .1-foot candle, measured line of sight from any point on the receiving property. Staff concludes that this criterion is met; (13) The ingress and egress to the subject parcel and any structure involved shall not adversely affect traffic flow, safety or control. The City's Infrastructure Engineer reviewed the Special Exception and has no objection. Staff concludes that this criterion is met; (14) The access and internal circulation shall be adequate in case of fire or emergency. The City's Fire Marshall reviewed the proposed and determined that the Special Exception meets the requirements with Conditions outlined in the Applicant's Response Letter. Applicant has met these requirements. Staff concludes that this criterion is met; (15) The proposed use shall not adversely affect traffic flow, safety or control on the surrounding roadway system. The City's Infrastructure Engineer reviewed the Special Exception and had no objection. Staff concludes that this criterion is met; (16) The location, type and availability of proposed potable water systems shall be adequate for the proposed use and shall not adversely affect neighboring potable water systems. Water service is available through a well system and is adequate for the proposed use. Staff concludes that this criterion is met; (17) The location, type and availability of proposed wastewater systems shall be adequate for the proposed use and compatible with drainage conditions in the area and neighboring uses. The City's Utilities Construction Coordinator reviewed the Special Exception and had no objection. Staff concludes that this criterion is met; (18) The proposed use shall not cause or intensify flooding of neighboring uses. The City's Stormwater Manager reviewed the Special Exception and deemed that it meets requirements with the Conditions. These Conditions are listed on Exhibit L, as part of the Staff Report. There is no evidence that the proposed use will cause or will intensify flooding of neighboring uses. Staff concludes that this criterion is met.

Following a question, Zoning Coordinator Willette-Grondin affirmed that there is another legally existing, non-confirming kennel located in the Estates area, and it was a permitted use until the Code changed.

CROSS EXAMINATION

Questions ensued by Attorney Russell to Planning Division Manager Norton: (1) she holds a Bachelor Degree in Urban and City Planning; (2) has worked 14 years with the City of North Port; (3) she is a Certified City Planner with the American Institute of Certified Planners (AICP) and has participated in on-going educational courses since 2004; (4) Manager Norton concurred with the Staff Report provided on the record by Ms. Willette-Grondin, and concurs with the findings by Ms. Willette-Grondin.

Mr. Neuman clarified that the monetary transaction process for a puppy has already occurred when a customer arrives with a receipt to pick up the dog. Additional clarification about the berm was provided and a hand-drawn rendering was submitted for the record.

CROSS EXAMINATION

Questions to Mr. Neuman ensued: (1) it was stated that Sunshine Pups is his primary source of income; (2) between 300 and 350 puppies are sold annually; (3) the breeder maintains the property, Mr. Neuman boards the puppies, a client arrives to pick up the puppy, shows a purchase receipt and takes possession of the dog. Thereafter, Mr. Neuman is paid; (4) Mr. Michael Schoeff is not the breeder; (5) puppies spend an average of 14 days in the kennel before being purchased; (5) after citing Exhibit "J", the Sarasota County Ordinance, under the definition of an owner as one who is in possession, custody, control, shelters, feeds. etc., of the animal for more than five days, Mr. Neuman

affirmed he was the owner; (6) it was stated that, according to the Sarasota County Ordinance, an operator of a kennel, cannot own the animals boarded within; (7) sales tax is collected in Florida; (8) the puppies are flown here from Ohio on a commercial airline; (9) the purchase process of a puppy was explained; (10) purchases are from credit card only and are not collected at the pick up site; (11) after a purchase, there is no "shipping" of animals but Mr. Neuman can make deliveries within a five-hour travel radius; (12) there is a 14-day return policy that covers exchange of the pet or for medications and is based on the situation; (13) after a purchase, the customer received a Florida Health Certificate, registration papers, if any, by the American Kennel Club (AKA) or the American Canine Association (ACA); (14) it is unknown whether the sales receipt states a return policy; (15) the health certificate is completed by Dr. David Smith, Sarasota Veterinarian Center and is received soon after the dogs are delivered to the kennel; (16) it was stated that Mr. Michael Schoeff was a USDA Approved Breeder and then became a hobby breeder and is no longer doing it as his profession; (17) Mr. Neuman does not purchase animals from Mr. Schoeff; (18) Mr. Schoeff is associated with Puppy Avenue, Inc.; (19) the website photos are not updated and are approximately six-years old; (20) there is an area inside the house for play time when the dogs are not able to go outside; (21) the viewings are done inside the petitioners house and is limited to two dogs; (22) dogs are eight-weeks old, are able to eat dog food, and are finished nursing when shipped from Ohio to Florida.

Acting City Attorney Mooney-Portale reviewed City Code, Section 2-83, Procedures for quasi-judicial proceedings, and clarified the public's limited right to be heard during the hearing. It was recommended to consider public comment, and depending on the nature of an objection, take it under advisement, note the objection in the record, and proceed. During deliberations, consider the hierarchy of evidence, any objections, and where a public comment falls in that hierarchy.

PUBLIC COMMENT:

Mildred Hubbard: licensing with USDA, hobby breeding, kennel definition. Attorney Russell objected based on irrelevancy to the Special Exception Application.

Cynthia Kahn: Sarasota County's Ordinance regarding hobby breeders, North Port's reputation. Attorney Russell objected based on hearsay, and irrelevancy to the Special Exception Application.

Lou Anne Koch: structure and function of hobby breeders. Attorney Russell objected based on irrelevancy to the Special Exception Application.

Suzanne Matthews: the Planning & Zoning Advisory Board's discussion and decision. Attorney Russell objected based on hearsay.

Joanne Corcoran: purchased a sick puppy. Attorney Russell objected based on irrelevancy to the Special Exception Application.

Dr. Ron Lott: it is a retail operation. Attorney Russell objected based on irrelevancy to the Special Exception Application.

Stewart David: an experience regarding a puppy mill. Attorney Russell objected based on irrelevancy to the Special Exception Application.

Ronnie Carroll: positive comments regarding the facility and business in North Port. Attorney Russell had no objection.

Kathy White: opposes approval of the alleged puppy mill. Attorney Russell objected based on irrelevancy to the Special Exception Application.

Pamela McDonald: the health track record not good for puppies sold in this manner. Attorney Russell objected based on irrelevancy to the Special Exception Application.

Samantha Gendrof: opposes mass production of pets, do not approve the application. Attorney Russell objected based on hearsay and irrelevancy to the Special Exception Application.

Carol Singer: ambiguities mentioned in the meeting and puppy mill environment from which they come. Attorney Russell objected based on irrelevancy to the Special

Exception Application.

Joe Neuman Sr.: cited national animal abuse organizations, the right to purchase from a reputable source. Attorney Russell had no objection.

Recess: 11:11 p.m. - 11:26 p.m.

CLOSING ARGUMENTS

Attorney Russell presented a PowerPoint listing all the conditions that have been met by the petitioner and stated that no one addressed anything in opposition to the criteria. Mr. Neuman more than met the burden and all the criteria, and it was requested that the Commission grant the Special Exception for the kennel.

Mr. Neuman stated his business is upstanding and many issues have been resolved so the Special Exception Permit may move forward.

Mayor Yates closed the public hearing.

COMMISSION DELIBERATIONS

Commissioner McDowell expressed concern that \$500,000 annually in revenue, the quantity of puppies sold, the returns policy, and everything read indicates that it is a retail sales business in the Agricultural Zoning District. In addition, the Special Exception request is for more than just a shed, and 15 of the 26 Conditions pertain to animals.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner McDowell, to deny Resolution No. 2017-R-11, based on the lack of competent and substantial evidence, which has not provided to support its use in the Future Land Use or the Comprehensive Plan; nor has it supported Section 53-23 in the ULDC; nor has it supported 53-25 in the ULDC; and it is specifically a prohibited use as listed in 53-26.

COMMISSION DELIBERATIONS CONTINUED

(1) Vice-Mayor Carusone stated: [a] it is clear that a business is being run on the premises; [b] that the structure is more than a shed; [c] that it is a commercial establishment with more than one business utilizing the property as its home base; [d] testimony provided was inconsistent; [e] parts of the Application is inconsistent with the testimony provided; [f] the business is not part of the City's Future Land Use Plan, or the Comprehensive Plan goals and objectives; (2) for clarification, it was confirmed that the preceding discussion points were intended to include the ULDC; (3) Commissioner McDowell articulated concern that had the issue only pertained to a shed, the issue would have been easily resolved, but Section 2.01 of the Resolution goes much further, in allowing the kenneling of toy size puppies in the Agricultural (AG) zoning district as an accessory use on the proposed site; (4) Commissioner Luke stated: [a] the Application should align with the City's Comprehensive Plan and the ULDC; [b] a decision must adhere to and abide by Sarasota County's Animal Control Ordinance because this is a fresh hearing; (5) Mayor Yates stated: [a] running a kennel for commercial gain is where the request conflicts with the ULDC Section 53-26; [b] the activities conducted on the property do not fit a web-based, e-commerce business; [c] in addition to the 96-foot shed housing area, there is 526-feet that is utilized for the business; [d] other modifications to the property such as the berm requirement, move the business toward a commercial nature; [e] the use of the home for the business was not considered in the Application in regard to the space utilized therein; [f] the motion indicates that Findings 1 through 6 of the Conditions of Approval were not met and should be captured in the motion; (6) following a question, Acting City Attorney Mooney-Portale suggested to make a motion and specify the criteria within the Resolution believed not met, as well as reference the specific Petition Application, noting if there is disagreement with any of the Findings, and

making sure the determination is based on competent, substantial evidence of why the Applicant did not qualify for the requested Special Exception; (7) it was stated that if the determination is denied, there is a provision in the City Code that a written Order shall be issued to the Applicant by the City's legal counsel which states the reasons for denial; (8) requesting a point of clarification, it was confirmed that Vice-Mayor Carusone and Commissioner McDowell agreed with Mayor Yates' assessment that Findings 1 through 6 have not been met.

After the motion maker and the seconder approved a friendly amendment to the motion, to incorporate Mayor Yates' statement that Findings 1 through 6 have not been met, a vote was taken on the motion which carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

A motion was made by Vice-Mayor Carusone, seconded by Commissioner McDowell, to deny Petition No. SPX-14-158, based on competent and substantial evidence that the Applicant has not met the criteria required in Chapter 53-259, and that it is furthermore not in compliance with the Comprehensive Plan, the Future Land Use Map or other Sections of the ULDC, including all the Findings that the Commission previously discussed. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

Interim City Attorney Slayton replaced Acting City Attorney Mooney-Portale at 12:15 a.m.

6. CONSENT AGENDA:

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Luke, to approve the Consent Agenda, Items A through E, pulling F. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

- A.** [17-1198](#) Approval of Minutes for the April 3, 2017 Commission Special Meeting; April 6, 2017 Commission Special Recognition Meeting; and April 11, 2017 Commission Regular Meeting.
- B.** [17-1192](#) Appointment of Aron Walton as the Diversified Light Industrial/Planning Member to the Community Economic Development Board.
- C.** [17-1167](#) Cash Receipts Summary - May 2017
- D.** [17-1106](#) Microsoft Office 365 license renewal in the amount of \$106,471.80, between the City of North Port and SHI International Corp. plus an additional \$40,000.00 contingency to complete remaining IT projects in FY 2017.
- E.** [17-1110](#) Purchase of Dell servers for Police Datacenter for an estimated cost of \$31,316.25.
- F.** [17-1112](#) Amendment to Facilities Management Agreement Contract No. 2010-504

and 2010-505 between the Charlotte County Family Young Men's Christian Association, Inc., the Sky Family Young Men's Christian Association, Inc., the City of North Port, and Sarasota County

Following a question, it was stated that the Al Goll Center is open and operates as a child care facility and summer camp, therefore meets the recreational component. The fitness center was pulled out years ago, moved elsewhere, and is being closed now. The YMCA pool is used as a recreation facility to the public. Further clarification was provided that the new party has an assignment of assumption and amendment to the Contract to substitute one party for another of that party and will assume all obligations under the Contract.

A motion was made by Vice-Mayor Carusone, seconded by Commissioner Luke, to approve Consent Agenda Item F. The motion carried by the following vote:

Yes: 5 - Mayor Yates, Vice-Mayor Carusone, Commissioner Hanks, Commissioner Luke and Commissioner McDowell

- G. [17-1166](#) Water and Wastewater System Standard Developer's Agreement between the City of North Port and Marsh Creek Holdings, LTD.

THIS ITEM WAS REMOVED FROM THE AGENDA.

7. COMMISSION COMMUNICATIONS:

Nothing to report.

8. ADMINISTRATIVE AND LEGAL REPORTS:

Nothing to report.

9. PUBLIC COMMENT: 12:21 a.m. - 12:26 a.m.

Public Comment was held 12:21 a.m. - 12:26 a.m.

Connie Brunni: the Florida Bar website still lists Mark Moriarty as the City's Attorney.

Cory Hutchinson: salary for government staff.

Following public comment, a brief conversation ensued regarding Mr. Moriarty's out-of-date information on the Florida Bar Association's website and other social media. There was an agreement to have City Attorney Slayton communicate with Mr. Moriarty to update his contact information.

10 ADJOURNMENT:

Mayor Yates adjourned the North Port City Commission Regular Meeting at 12:30 a.m. on Wednesday, July 12, 2017.

City of North Port, Florida

By: _____
Vanessa Carusone, Mayor

Attest: _____
Patsy C. Adkins, MMC, City Clerk

Minutes approved at the City Commission Regular Meeting this ____ day of _____, 2017.