

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 12, 2005



A regular meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 6:30 p.m. by Mayor Harry C. Goode, Jr.

1. Chaplain Gordon Strongitharm, Tabernacle Church of Melbourne, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Richard Contreras	Vice Mayor, District 1
	Mark LaRusso	Council Member, District 2
	Kathy Meehan	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Loretta Isenberg-Hand	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Assistant City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

Mayor Goode presented a Certificate of Appreciation to Acting Lieutenant Ron Stake and Firefighter Tom Morissette for their heroic actions and quick response on June 27, 2005 that saved a citizen's life, prevented injury to fellow firefighters and police officers, and prevented the destruction of a residential structure. Fire Chief Paul Forsberg also presented each firefighter with a commendation bar and a letter of congratulations.

The Mayor presented a Certificate of Completion to Council Member Kathy Meehan for attendance at the 2005 Institute for Elected Municipal Officials, sponsored by the Florida League of Cities and the Florida Institute of Government.

5. Approval of Minutes - June 28, 2005 Regular Meeting

Moved by Walker/Hand for approval of the minutes. Motion carried unanimously.

6. City Manager's Report

City Manager Jack Schluckebier reported on the following:

- Wickham Road Driveway Permit Moratorium – At its July 12 meeting, the Board of County Commissioners delayed this item for one week.
- Voluntary Annexation – On July 12 with virtually no published notice, the County Commission considered a possible County charter amendment that would have

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substantially restricted voluntary annexation in Brevard County and imposed new regulations never before seen in Florida. The City Manager, City Attorney and Council Member Mark LaRusso attended that meeting to express Melbourne's concerns. Mr. LaRusso read a letter to the Commission from the Mayor requesting the County not take this action. The County has taken issue with the way several cities – Melbourne not included – handle voluntary annexation. The Commission decided to work with the various cities and revisit this next July if the issues have not been resolved by then.

- Annual Fireworks Display – The City received approximately \$15,900 in donations for the annual fireworks display, which was more than sufficient to pay for the expenses. If the level of sponsorship remains, the City will consider increasing the size of the show next year.

7. Public Comments

Eric Ellebracht, 1948 Tyler Avenue, discussed the number of adult arcades opening in Melbourne. He suggested that these “gambling parlors/adult arcades” be located in the area zoned for adult entertainment. He added that one arcade is located within 200’ of a school.

Attorney Gougelman explained that the real question is whether or not they are legal. If they are legal, they may operate like any other business. If they are not, they need to be closed. Adult arcades have been subject to police investigation. Additionally, the City has been working with the State Attorney's Office (SAO). The SAO recently indicated it is prepared to file criminal charges with regard to the arcade that was closed down and the subject of an appeal to the Fifth District Court of Appeals, which the City won. Attorney Gougelman offered to brief Council Members individually, privately.

The City Manager added that until the SAO authorizes arrest warrants, the City is reluctant for the second time to seize the assets of and close that arcade.

A brief discussion followed regarding card rooms, which fall under the State of Florida pari-mutuel regulations.

Douglas Dixon, 2779 Caitlin Court, President, North Melbourne Homeowners' Alliance, discussed his concerns with a commercial operation locating next to a residential area. He explained that the City does not currently have an ordinance that limits the time a business may load/unload trucks. Although the City has a noise ordinance, it is difficult to monitor noise from 10:00 p.m. – 6:00 a.m. He asked the City to consider establishing such an ordinance to protect residential areas located next to commercial areas.

Vice Mayor Contreras said that with the approval of the Mayor and City Council, he would like to see this adjustment made in the City Code.

Pat Poole, 805 East Palmetto Avenue, discussed the County parks and recreation referendum passed in November 2000. She reported that a brochure prepared by the

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County listed the South Brevard Senior Center at a cost of \$491,640. She discussed the events that eventually resulted in the Senior Center deciding to locate on Airport property. She said that this change will cost the taxpayers \$1.1 million over a 40-year period.

8. PRESENTATION TO COUNCIL: Legislative update from State Representative Mitch Needelman.

State Representative Needelman provided a brief presentation on the 2005 legislative session. He discussed the State's budget, growth management, health care, Castle Doctrine, sexual predators, juvenile justice, insurance, gambling/casino issue, and Melbourne's local bill on annexation. Representative Needelman thanked Council for the opportunity and privilege to serve in Tallahassee.

Vice Mayor Contreras referenced his request to staff for information on the action items requested of the Brevard Legislative Delegation for the last five years. He wanted to know the outcome of each request. Mr. Contreras said he received the response from staff in memo format; however, he would prefer a matrix that displays the tally of what was presented, what was approved, what was vetoed by the Governor, etc.

Moved by Contreras/Walker that City staff provide on an annual basis, starting with this legislative year, items that the Brevard Legislative Delegation takes to Tallahassee and its results in matrix format.

In response to the Mayor, Representative Needelman confirmed that approximately 2,500 bills are filed each year; approximately 300 are passed.

The Mayor said that this is a tremendous amount of work to do on 2,500 bills. Mr. Contreras said he just wants information from the Brevard Legislative Delegation.

Mr. Schluckebier said that Mr. Contreras is interested in seeing the list the City promulgates to the Legislative Delegation and a report on success achieved. He would like this in matrix form instead of paragraph form. Mr. Contreras replied that he is interested in bills from Brevard County, not just Melbourne.

The question was called. The roll call vote was:

Aye: LaRusso, Meehan, Walker, Palmer, Hand, and Contreras

Nay: Goode

Motion carried.

UNFINISHED BUSINESS

9. ORDINANCE NO. 2005-77 OLDE EAU GALLIE RIVERFRONT COMMUNITY REDEVELOPMENT DISTRICT: (Second Reading/Public Hearing) An ordinance amending the Olde Eau Gallie Riverfront Redevelopment District to include an expansion

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area of 144.74 acres, located north to Coleman Street, south to the Eau Gallie River, east to the Indian River Lagoon, and west to the Florida East Coast Railroad tracks and amending the Olde Eau Gallie Riverfront Community Redevelopment Plan. (First Reading - 6/28/05)

Attorney Gougelman read the ordinance by title. Mayor Goode referenced the letter of support from Rick Hester distributed prior to the meeting. The Mayor opened the public hearing.

Kelly Beverly stated that he is in the process of buying Dr. Joe's Intracoastal (located in Downtown Eau Gallie). He and his partners plan on operating a jazz-type café. He asked general questions about the redevelopment area.

Mayor Goode pointed out Gene Davis, a redevelopment advisory board member, in the back of the Council Chamber. He recommended that Mr. Beverly speak to Mr. Davis about the plans for the Eau Gallie area.

Mayor Goode closed the public hearing.

Moved by LaRusso/Hand for approval of Ordinance No. 2005-77. The roll call vote was:

Aye: LaRusso, Meehan, Walker, Hand, Contreras, and Goode

Nay: Palmer

Motion carried.

10. ORDINANCE NO. 2005-78 (CPA-2005-12) AND ORDINANCE NO. 2005-79 (Z-2005-1034) "THE PRESERVE" AT LAKE WASHINGTON SUBDIVISION: Ordinances providing for a Comprehensive Plan Amendment and zoning change on a 0.67±-acre parcel, located within the Preserve at Lake Washington Subdivision on the south side of Lake Washington Road, west of Avocado Avenue. (Owner/Applicant - Riverside Development Group, Inc.) (Representative - Jake Wise, P.E., Construction Engineering Group) (P&Z Board - 6/02/05)
- a. Ordinance No. 2005-78/CPA-2005-12: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment to change the Future Land Use from Industrial to Low Density Residential. (First Reading - 6/28/05)
 - b. Ordinance No. 2005-79/Z-2005-1034: (Second Reading/Public Hearing) An ordinance providing for a zoning change from M-1 (Light Industrial) to R-1B (Single Family Residential). (First Reading - 6/28/05)

Attorney Gougelman read Ordinance Nos. 2005-78 and 2005-79 by title. There were no disclosures by Council and no comments from the public. The applicant's representative, Jake Wise, was in the audience.

Moved by Hand/LaRusso for approval of Ordinance No. 2005-78. The roll call vote was:

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Aye: LaRusso, Meehan, Walker, Palmer, Hand, Contreras, and Goode

Motion carried unanimously.

Moved by Contreras/Meehan for approval of Ordinance No. 2005-79. The roll call vote was:

Aye: LaRusso, Meehan, Walker, Palmer, Hand, Contreras, and Goode

Motion carried unanimously.

11. ORDINANCE NO. 2005-80 (CU-2005-03) RIA MELBOURNE LIMITED PARTNERSHIP: (Second Reading/Public Hearing) An ordinance granting a conditional use to allow indoor recreation on a portion of a 4.1±-acre parcel zoned C-1 (Neighborhood Commercial), located on the north side of Palm Bay Road, west of Babcock Street, and east of Stack Boulevard. (Owner/Applicant - RIA Melbourne Limited Partnership) (Representative - Joe Corey) (P&Z Board - 6/02/05) (First Reading - 6/28/05)

The City Attorney read the ordinance by title. There were no disclosures by Council and no comments from the public.

Moved by Palmer/Walker for approval of Ordinance No. 2005-80. The roll call vote was:

Aye: LaRusso, Meehan, Walker, Palmer, Hand, Contreras, and Goode

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract award for the Aurora Road Elevated Water Storage Tank Renovation, Project No. C04300, Utility Service Company, Inc., Perry, GA - \$82,000.

City Engineer Howard Ralls briefed Council. The recommendation is to award the contract to Utility Service Company, Inc. in the amount of \$82,000.

Council Member Loretta Hand referenced the difference between the two bids received - \$82,000 versus \$188,000. She asked if the low bidder is expected to do a good job for the City. Mr. Ralls replied that both bidders have done work for the City and both are considered competent. He added that one of the bidders wanted the job more than the other. Additionally, he noted that he is confident Utility Service Company can do the project.

A brief discussion followed.

Moved by Hand/Goode for approval of the recommendation. Motion carried unanimously.

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13. CONSENT AGENDA:

Moved by Contreras/LaRusso for approval of the consent agenda, Items “a – f.” Motion carried unanimously.

The consent agenda was approved as follows:

- a. Acceptance of lift station easement and ingress/egress roadway easement across the Harris Corporation property located at 150 South Wickham Road.
- b. Annual contract award for custodial services for nine City buildings, Diversified Maintenance, Tampa, FL - \$64,236.
- c. Purchase of Zcorr digital leak detection equipment, software, and training, Utility Distribution Support, Windermere, FL - \$21,550.
- d. Annual contract award for various City-owned communications equipment, Florida Communications, Inc., Rockledge, FL - \$17,779.59.
- e. Approval of a Joint Participation Agreement between the City of Melbourne and the Florida Department of Transportation for landscape funding totaling \$61,494 for Eau Gallie Square and authorization for the City Manager to execute the agreement.
- f. Approval of the Brevard County MPO Transportation Improvement Program priority listing.

14. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

15. ORDINANCE NO. 2005-82 (A&V No. 283): (First Reading/Public Hearing) An ordinance vacating two portions of the 10-foot wide utility easement along the south and west side of Tract “A” of the plat of Sonesta Walk Subdivision. (Applicant - David Barrin, President, Sonesta Walk Subdivision Homeowners’ Association)

Attorney Gougelman read the ordinance by title. There were no disclosure by Council and no comments from the public. The applicant was in the audience.

Moved by Contreras/Meehan for approval of Ordinance No. 2005-82. Motion carried unanimously.

16. ORDINANCE NO. 2005-83 (AR-2005-173), ORDINANCE NO. 2005-84 (CPA-2005-11), ORDINANCE NO. 2005-85 (Z-2005-1030), AND ORDINANCE NO. 2005-86 (CU-2005-10, WAL-MART NEIGHBORHOOD MARKET AND MURPHY OIL): Ordinances providing for annexation, a Comprehensive Plan Amendment, zoning designation, and a conditional use on a 9.17-acre parcel located at the southwest corner of Wickham Road

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and Post Road. (Owner/Applicant – Wal-Mart Stores East, LP) (Representative – Kimley-Horn and Associates, Inc.) (P&Z Board – 6/16/05)

- a. Ordinance No. 2005-83/AR-2005-173: (First Reading/Public Hearing) An ordinance providing for annexation of 10.857 acres (a 9.17-acre parcel plus a 1.687-acre adjacent Post Road right-of-way).
- b. Ordinance No. 2005-84/CPA-2005-11: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial on 9.17 acres.
- c. Ordinance No. 2005-85/Z-2005-1030: (First Reading/Public Hearing) An ordinance providing for a zoning designation of C-1 (Neighborhood Commercial) on 8.02 acres and C-2 (General Commercial) on 1.15 acres.
- d. Ordinance No. 2005-86/CU-2005-10: (First Reading/Public Hearing) An ordinance granting a conditional use to allow a gas station on a 1.15-acre out-parcel at the northeast corner of the Wal-Mart site.

Attorney Gougelman read the ordinances by title. Mrs. Dittmer briefed Council. The property was recently developed as a Wal-Mart Neighborhood Market. The applicant is requesting annexation based upon a pre-annexation agreement. The applicant entered into the agreement prior to the development of the property to obtain City water and sewer service. The agreement provided for additional requirements, above the required Brevard County regulations, that have been met with the construction of the building and site. Recent complaints by the adjacent residential development (East Bay Plantation) related to noise caused by truck deliveries have been resolved with the local store manager. A condition has been added to the zoning ordinance, which prohibits deliveries between 10:00 p.m. and 6:00 a.m.

The Planning and Zoning Board voted unanimously to recommend approval of the annexation, Comprehensive Plan amendment and zoning. The board voted 6 to 1 to recommend approval of the conditional use.

Mrs. Dittmer confirmed for Mrs. Hand that the pre-annexation agreement was executed prior to the City Code change, which requires annexation to obtain City water. Mr. Schluckebier added that without the City Code change, the City was negotiating with one hand tied behind its back. Staff was able to obtain a pre-annexation agreement along with substantial compliance with our Code in six or seven areas. County staff approved construction, but the City was able to achieve compliance in several areas. Mrs. Hand said she believes that Wal Mart knew exactly what it was doing.

Vice Mayor Contreras said that he received an interesting call relating to the annexation. Residents located to the south have difficulty accessing the site because of no sidewalk. He asked what could be done to address this.

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Mrs. Dittmer confirmed that Wal Mart extended the sidewalk to its property line; however, there is no sidewalk in front of East Bay Plantation. She added that it won't be as simple as pouring concrete because of a culvert that will need to be piped.

Mr. Contreras asked staff to look into this issue and return with information.

Mayor Goode called for disclosures.

Mr. Contreras said that on June 9 and June 16 he spoke with Carl Niswander (St. Armens Circle), Vice President of the East Bay Plantation Homeowners' Association. They discussed the pre-annexation agreement, lighting, wall connection, truck noise, traffic on Post and Wickham Roads and the need for a sidewalk between Wickham Road and the East Bay Plantation wall.

Susan Motley, Attorney representing Wal Mart, agreed with staff's recommendations. With regard to the new condition, which prohibits deliveries between 10:00 p.m. and 6:00 a.m., she said that representatives from the adjacent homeowners' association asked her to state that those restricted hours include not only truck deliveries, but the loading and unloading of trucks. She stated that Wal Mart is in agreement with that.

Mayor Goode asked if Wal Mart would be receptive to paying for the sidewalk in front of East Bay Plantation. Ms. Motley replied that this is the first she has heard about this. Although she is not able to commit at this meeting, she would be happy to discuss this with the City.

John Tuite, 3980 St. Armens Circle, President, East Bay Plantation Homeowners' Association, stated that the residents support the annexation of Wal Mart. He added that there were a number of problems experienced in the past year relating to noise; however, they seem to have gotten that under control. He expressed appreciation for inclusion of the restricted delivery hours in the zoning ordinance.

With regard to the sidewalk, Mr. Tuite reported that last week he received a call from the County asking for an easement from the association for construction of a sidewalk in that area. He said that apparently the County is going to take care of this.

Pat Poole, stated that Wal Mart decided to build to County regulations and then annex into Melbourne. As a result, they have 10' wide parking spaces. She commented that developers need to meet our regulations and added that is what will keep Melbourne a quality city.

Mr. Schluckebier said that this is a unique circumstance. The property was not required to be in the City. It is clear that they don't meet all the City Codes; however, he noted that he does not believe this will be a recurring circumstance.

Continuing, the City Manager said that some time ago he pledged that on pre-annexation the City would make its best effort to require developers to meet City Code; that is our

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objective. It is not the City's intent to provide a backdoor avenue for a developer that does not meet City Codes.

Mr. Contreras said he would like to revisit what Mr. Dixon discussed (under public comments, Item #7) about commercial development located adjacent to residential development. He said that a Code provision would eliminate a lot of pain and suffering.

Council Member Kathy Meehan said that the Planning and Zoning Board minutes indicate that a resident discussed an odor problem from the trucks loading and unloading. She questioned if this is related to the diesel and asked that this be looked into.

Council Member Cheryl Palmer stated that the City needs to look at transitional zoning where heavy duty commercial is located next to residential. The City Manager said that as the Zoning Code is going through review, staff will address these issues in our Code.

Susan Motley returned to the podium and said she has not heard about an odor problem. She explained that trucks typically drop off a tractor-trailer, which connects to the building; there is not a lot of idling. She added that she will speak to the store manager.

Moved by Contreras/Palmer for approval of Ordinance No. 2005-83. Motion carried unanimously.

Moved by Contreras/Meehan for approval of Ordinance No. 2005-84. Motion carried unanimously.

Moved by Contreras/Meehan for approval of Ordinance No. 2005-85. Motion carried unanimously.

Moved by LaRusso/Contreras for approval of Ordinance No. 2005-86.

Mrs. Hand said that if this development had come before the City Council for review and approval, she would not have supported the conditional use for the gas station.

The question was called. Motion carried. Council Members Walker and Hand voted nay.

17. ORDINANCE NO. 2005-87: (First Reading) An ordinance amending Chapter 32, Utilities, repealing Section 32-7.1, interest on deposits, and amending Section 32-6, to allow deposits to be held in non-interest bearing accounts.

Attorney Gougelman read the ordinance by title.

Moved by Palmer/Hand for approval of Ordinance No. 2005-87. Motion carried unanimously.

18. ORDINANCE NO. 2005-88: (First Reading/Public Hearing) An ordinance repealing Ordinance No. 89-18 (which provided for the opt-out of Brevard County's collection of emergency services facilities expansion impact fees within the City of Melbourne). (P&Z

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Board - 7/07/05)

From the agenda report: The City adopted Ordinance No. 89-18 because the County's fee was for both fire and ambulance services. Melbourne didn't feel it was appropriate to implement this fee because Melbourne already provided fire response services. At the time the opt out ordinance was adopted it was suggested that at such time in the future that the County revises its emergency services facilities impact fee to separate fire response services from ambulance services, the City should re-examine whether to participate in an emergency ambulance response capital facilities expansion impact fee.

Brevard County did revise the emergency service impact fee in 2001 and established a separate emergency medical services facilities impact fee program. The County Manager recently notified the City that this fee is effective County-wide unless a municipality has its own emergency medical services impact fee. Melbourne does not have its own emergency services impact fee.

To participate in this County-wide impact fee program, Melbourne must first repeal the existing opt out ordinance (No. 89-18). After the existing ordinance is repealed, the interlocal agreement with Brevard County for implementation of the emergency medical services facilities impact fee program will be presented to City Council. This is expected to occur in early August.

Attorney Gougelman read Ordinance No. 2005-88 by title. There were no comments from the public.

Moved by Contreras/Walker for approval of Ordinance No. 2005-88. Motion carried unanimously.

19. COUNCIL ACTION RE: Approval of contract between the City of Melbourne and the Coastal Florida Police Benevolent Association.

From the agenda report: The recommendation is for Council to approve the proposed collective bargaining agreement with the Central Florida Police Benevolent Association for a three-year period, October 1, 2004 through September 30, 2007 and authorize the City Manager to execute the contract with the CFPBA, which includes those items detailed in the ratified Memorandum of Agreement.

Moved by LaRusso/Hand for approval as recommended. Motion carried unanimously.

20. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Council Member Loretta Hand reported on the amount of debris in her neighborhood as a result of illegal fireworks on the Fourth of July. She discussed the safety aspect and noted that one of the neighborhood missiles landed within three feet of her daughter. She suggested that the City consider moving its annual display to an area that will accommodate more parking and a larger crowd. She said that if people didn't have to

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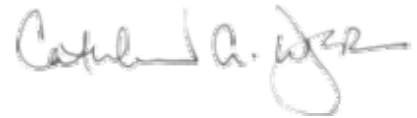
fight the parking and crowds, perhaps they would be inclined to attend the City's display rather than staying home and shooting off their own fireworks.

Mr. Schluckebier said that staff will look at other locations. He elaborated on the City efforts to address illegal fireworks.

21. ADJOURNMENT

Moved by LaRusso/Meehan to adjourn. Motion carried unanimously.

The meeting adjourned at 8:13 p.m.



City Clerk – 7/21/2005

Approved by Council: July 26, 2005