

CITY OF MELBOURNE, FLORIDA
MINUTES – WORKSHOP MEETING BEFORE CITY COUNCIL
AUGUST 30, 2005



A workshop 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. Pledge of Allegiance.

2. 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
	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	Deputy City Manager
	Howard Ralls	Deputy City Manager

Absent: Cheryl Palmer Council Member, District 5

3. Council Presentation Re: Capital Program Workshop

City Manager Jack Schluckebier reported that Deputy City Manager Howard Ralls broke the workshop into four categories. He elaborated on each and asked Mr. Ralls to move through the issues.

a. FY 05/06 Capital Improvement Program

Mr. Ralls reported that staff presented a balanced budget. This item provides additional information that was requested at the budget workshop meeting. The package includes the history of the City Hall expansion and renovation project; information on the proposed study of a second north/south road across Airport property from Apollo Boulevard to Croton Road; and background information on the proposed Auditorium study.

Council Member Loretta Hand referenced the second Apollo Boulevard extension project (north/south road across Airport property). She said she wants to be certain that this project won't take priority over the Apollo Boulevard extension (across the Eau Gallie River). She added that the Airport has to attract flights before thinking about additional development; therefore, she does not believe that the road is needed at this time.

Mr. Ralls replied that the City and the Metropolitan Planning Organization are interested in both roads; both projects are necessary. With regard to the Apollo extension (across the river), the MPO is in the process of selecting a consultant. The preliminary engineering is estimated at \$3 million and the City's share will be \$375,000.

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Mayor Goode said he raised the same question and staff assured him that the extension across the river is a priority. Although it will be expensive to build a bridge, this project won't slide.

Vice Mayor Contreras thanked staff for resurrecting the data on City Hall and the Auditorium/Wells Park site. He said that it appears to him that there are no reverter clauses in the deeds that transfer the Wells Park property to the City. Mr. Ralls replied that is correct and added that the City Clerk researched the records from 1915 forward. Mr. Schluckebier pointed out that the (City Code, Section 18-1) has restrictions on the transfer of park property.

Continuing, Mr. Schluckebier said that this item simply answers questions raised at the workshop meeting. The City has no plans to do anything with the Wells Park property.

The Vice Mayor concluded by saying that it appears to be a myth that there are reverter clauses in the Wells Park property deeds.

b. Five-Year Capital Improvement Program

- General Government Funding Deficiencies
- Potential Revenue Sources

Mr. Ralls said that the City Manager's transmittal letter in the proposed fiscal year 2005-2006 budget identifies a funding requirement of over \$61 million for capital improvements and projected available funding of almost \$17 million. There is a shortfall of \$44 million. Since the 2005-2006 budget is balanced, the shortfall would be spread over a period of four years. Staff has looked at all the possible feasible funding sources and provided information as follows:

One-Cent Sales Tax. This has been previously unsuccessful. It would require County Commission approval for a referendum. If successful, the estimated annual revenue would be over \$7 million.

Mill Property Tax Increase. This would require Council approval during the budget process next year and an Attorney General opinion that would allow us to increase beyond the Brevard special limit of 10% above the rollback – or by referendum. In comparison to the one-cent sales tax, the estimated annual revenue would be \$3.5 million.

Mrs. Hand asked the proposed duration of the one-cent sales tax. The City Manager replied that there is no proposal pending. The last one rejected by the voters was for 20 years. The people made it clear that this was too long of a period.

Council Member Mark LaRusso asked how many items were attached to the 20-year sales tax plan. The City Manager replied that across 15 cities and the County, hundreds of items were listed. The City of Melbourne proposed items for the first 10 years; those

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items were limited to items the Council had previously reviewed or approved. Melbourne did not “make up” any new items.

Regarding the one-cent sales tax, Mr. Schluckebier said that a referendum could also happen if the cities that represent a majority of the population in the County (Palm Bay, Melbourne, Titusville, Rockledge, Cocoa and West Melbourne) approve. Council could direct staff to work with the other cities or with the County in pursuit of that.

Mr. Schluckebier confirmed for Mr. Contreras that the sales tax would be on a County-wide basis. There would be specific agreements outlining the use of funds for capital projects as defined. The preference would be for the County to exercise leadership in a different way than occurred last time and determine what the people are willing to pay for, such as roads. The City’s share would be \$7 million by default/statute. The City and the County could enter into an agreement providing for a different amount. Unless there is substantial agreement, it would be fruitless to try and move forward with a referendum.

Regarding the property tax increase, the City Manager said that staff does not believe that the special act would withstand scrutiny if reviewed by the Attorney General. Council could ask the City Attorney to seek an opinion.

Regarding the cap on the property tax, Attorney Gougelman explained that taxation under the Florida Constitution has to be by general law that affects the state as a whole. The 10% limit is applicable only to Brevard County and was adopted by special act. The second issue is that in the State Constitution there is a list of issues that may not be legislated by special act and tax assessment is one of those.

Mr. LaRusso asked which method has been the most successful in Florida – property tax or sales tax. Mr. Schluckebier replied that 56 counties in Florida have adopted some or all of the one-cent sales tax for their infrastructure needs. In Brevard, the cornucopia of projects was just not acceptable to the voters.

The City Manager confirmed for Vice Mayor Contreras that the counties with the additional sales tax are considered to be “helping themselves” and they receive additional assistance from the state.

Mayor Goode added that the one-cent sales tax is palatable in Florida because approximately 30% of sales tax is paid by folks who are not residents of Florida. He said it will take a lot to convince the voters; however, he agreed that it has to be a short list and not a potpourri of items.

Mr. LaRusso said that roadways and stormwater management are the concern. Mr. Contreras agreed and said the very fine list over a short period of time needs to be results oriented.

Stormwater utility fee increase. Mr. Ralls explained that the City’s current fee (\$36) has a 40% credit resulting in the actual fee being \$21.60 per unit. If the City increased the fee

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to \$50 with the same 40% credit, the charge would be \$30 per year. This would provide an annual increase in revenue of about \$400,000.

Mayor Goode asked the approval authority. Mr. Ralls said that Council would have the authority to make this change and the funds would be dedicated to stormwater.

Continuing, Mr. Ralls distributed a list of drainage projects and noted their locations on a map. The list of identified projects totals \$14 million (some are maintenance items and therefore not fundable by the stormwater utility).

Vice Mayor Contreras asked for a copy of the map and the description. He added that the stormwater fee currently paid by our residents is woefully short of the \$14 million on the drawing board.

A brief discussion followed on the rate charged by other jurisdictions. Mayor Goode said he does not want to see City of Melbourne residents pay more for clean-up of water leading to the Indian River Lagoon when most of the sources are located west of the City. The City Manager noted that the projects identified are specific to Melbourne.

Mr. Ralls informed Council that we will soon be federally mandated to provide more treatment to reduce the pollutants leading to the Indian River Lagoon. He anticipates that this will be a 15-20 year program.

Mr. Contreras said that there is an imbalance in the funding as of today. And, Council is hearing that there will be federal mandates coming soon. He noted that we will always be behind at this rate.

Local option gas tax. The City Manager noted that an increase in the gas tax from the County is unlikely and virtually nil.

Mr. Schluckebier said that the other two possible funding sources – *utility tax and fire assessment* – relate to operating revenue. He added that he is not sure Council would want to pursue these to fund the capital program; however, they are additional revenue sources.

Mr. Schluckebier asked Council for direction on this agenda item.

Moved by LaRusso/Contreras to direct staff to work with the other cities on the one-cent sales tax increase.

Mr. LaRusso said that he would like staff to determine what the other City's challenges are and if they mirror ours. Mr. Schluckebier confirmed that staff will identify the best feasible funding arrangements for our infrastructure needs.

The question was called. Motion carried unanimously.

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Moved by Contreras/Goode to direct the City Attorney to seek an Attorney General opinion on whether the special act legislation on taxation that only affects Brevard County is legal.

Mr. Schluckebier said that if the opinion indicates that the legislation is okay, we would not be able to impose any additional millage without voter referendum.

Mrs. Hand said she will not support any additional increase in the millage rate.

The question was called. The roll call vote was:

Aye: LaRusso, Meehan, Contreras and Goode

Nay: Walker and Hand

Motion carried.

c. County Road Issues in the City

Deputy Manager Ralls reported that he attended a County transportation workshop meeting where the County identified a \$217 million deficiency for capacity-related capital road projects. And, they did not identify a lot of money for improving Wickham Road – at least not to the extent it will require. The County does not collect impact fees in the City and the City's formula for impact fees does not account for County roads. The City did contribute to the County's Croton Road project.

There are a couple of options to consider. The first would be to collect a surcharge impact fee for expansion improvements on County roads. The City could collect the fee and ensure that it goes for specific projects that we think are necessary. Staff would not recommend adding the County's fee on top of the City's fee. Based on trip miles on County minor arterial roads in the City, the suggested fee would be \$750 for a single-family residential unit. This would bring the total transportation impact fee to approximately \$2,000 per residential unit.

Mr. Ralls confirmed for Mr. Contreras that this would be for new construction. With regard to the fee, Mr. Ralls said it is per unit but would be proportionate to the number of trips generated.

Mr. Schluckebier said that staff is not looking for Council to be definitive at this point. It will take some time and the advantage of an outside report. Staff wants to affirm the issue that no one is taking responsibility in the City of Melbourne to finance needed improvements on County roads. And, the improvements the County has made are woefully inadequate.

Mrs. Walker asked what the City can do about this. Mr. Schluckebier said that staff is putting ideas on the table. We would like to return to this in the next three or four months. Also, given the predicament the City and County are in on North Wickham Road, there is

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an option under the law that would allow the creation of a Community Redevelopment Area. The County could create a CRA for a transportation-blighted district.

Mr. Contreras said that he would support a surcharge impact fee. This would be charged to people moving into the City and would result in a small fraction of growth paying for itself. Regarding the creation of a CRA in the North Wickham Road area, he said he would support approaching the County with this idea.

Mr. Contreras made a motion to have staff present language to Council for an additional surcharge impact fee for County road improvements in the City of Melbourne. There was no second.

Moved by Contreras/Hand for the City to approach the County about the creation of a Wickham Road Community Redevelopment Agency.

Mayor Goode said this is a great idea; however, 95% of the area is developed. He asked how much is out there and would this really be a revenue generator.

The City Manager said that staff would return with information. He noted that there is growth waiting at the door; it takes the Property Appraiser one to two years from the time a project is permitted until it is built to reach the tax rolls. In the North Wickham Road corridor it would not be unreasonable to expect \$50 - \$80 million in growth remaining in the City limits over the next five years.

The question was called. Motion carried unanimously.

d. Improving the Program

Mr. Ralls said that the last item under the capital improvements portion of the agenda relates to “improving the program.” The City needs to look beyond the five-year horizon on our road system. A plan should be developed for 10 – 20 years out.

The City needs an overall master plan for its parks. The Comprehensive Plan gives us a level of service, tells us the acreage, type of facilities, etc. It would be beneficial to have a consultant facilitate this along with a committee.

Road projects should be scheduled and constructed before the development arrives. The City needs to look at its maintenance projects. As an example, he displayed the history of the City’s street resurfacing program. In looking at the budget, the resurfacing program has not increased much over the years. We are going to have to increase the budget for resurfacing to provide for 12 – 17 miles per year to keep up. New development and annexation have added to our responsibilities and inflation has increased the cost. When a road has to be milled, the cost is increased by one third. He noted that the bottom line is that we have to maintain the existing infrastructure.

Mayor Goode agreed that the City is in arrears with street resurfacing.

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In addition to the maintenance projects, Mr. Ralls said the City needs to determine short-term and long-term projects. Developing planned maintenance programs and long-term master plans will take time and funding. Staff is not looking for specific direction on this item but simply pointing out that we will be looking at capital needs with better planning effort.

Regarding our parks, Mr. Contreras asked if a consultant recently provided information showing that we are in arrears. Mr. Ralls said that during the evaluation of the increase in recreation impact fees, the consultant looked at the Comprehensive Plan and future population. They identified definite deficiencies in our parks.

Mr. Contreras said he has long supported looking beyond the five year point and going into forward casting. Without identifying funding sources, the list of capital improvements does become the proverbial wish list that cycles to the next year.

A brief discussion followed on the City's budget process and the need to move into a 20 year planning cycle.

Recessed: 7:48 p.m.
Reconvened: 7:57 p.m.

4. **Council Presentation Re: Historic Preservation Ordinance**

From the agenda report: The Historic Preservation Ordinance was developed by the Historic Preservation Advisory Committee appointed by City Council in July 2003. Under the direction of historic preservation consultant, Ellen Uguccione of Janus Research, Inc., the committee worked over a period of almost two years to put together a proposed ordinance intended to promote the preservation of Melbourne's historic resources.

The three staff memoranda in the backup material provide:

- a. A status report summarizing public information outreach efforts, public input, and recommendations received from selected standing City boards and committees.
- b. A response to the 6/29/05 letter to the editor in the Florida Today newspaper from writer Celeste Henry.
- c. A summary of historic preservation incentives offered by various jurisdictions statewide along with a proposed ordinance to implement ad valorem tax exemptions for improvements to qualified historic properties in Melbourne, which ordinance is recommended for consideration concurrent with the proposed Historic Preservation Ordinance.

The recommendation is for Council to authorize placement of the proposed Historic Preservation Ordinance and the ordinance for Ad Valorem Tax Exemptions for historic properties on a future agenda for adoption.

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City Manager Jack Schluckebier stated that Housing and Community Development Director Melinda Thomas and Grants Administrator Sueann Thomaston have been working with the Historic Preservation Advisory Committee for the past two years. An ordinance has been developed and presentations are being made before the various boards and committees.

Mayor Goode asked the members of the committee in the audience to stand and be recognized. Mayor and Council offered a round of applause for the members' hard work and efforts.

Mrs. Thomas reported that the committee has been on the road sharing the proposed ordinance with various groups. The three community redevelopment agency advisory committees, the Building and Construction Advisory Committee and the Architectural Review Board have all given their approval. Additionally, the various boards asked that if this ordinance is adopted that certain economic incentives be considered. In furtherance of that objective, staff developed a proposed ad valorem ordinance that is consistent with State Statutes. If this ordinance passes and a board is constituted, further incentives would be something for that board to consider.

Mrs. Thomas concluded by introducing the historic preservation consultant Ellen Uguccioni of Janus Research, Inc.

Ellen Uguccioni provided her background and work experience. She presented a power point presentation and covered the following points:

The ordinance will provide a tool that will protect the important assets of Melbourne, assets that are irreplaceable; throughout the nation historic preservation has been successfully used in revitalization efforts, affordable housing, and enhancing tourism opportunities; Charleston enacted the nation's first preservation ordinance in 1932; the National Historic Preservation Act of 1966 has resulted in numerous federal incentives; and the Economic Tax Recovery Act of 1973 provides tax relief for buildings listed in the National Register of Historic Places.

Continuing, Ms. Uguccioni highlighted Melbourne's ordinance: the ordinance establishes a nine-member Historic Preservation Board (seven members and two alternates) appointed by City Council; members are selected with special expertise when available; the composition of the board mirrors the Florida Historical Commission; an Historic Preservation Officer will oversee the work of the board; that individual will be employed by the City; and the board is initially scheduled to meet eight times per year, but that schedule is flexible and may be adjusted.

An owner may petition the board for a property to be designated; in some circumstances, the board may initiate the designation; all recommendations for designation shall be forwarded to the City Council; all meetings will be publicly noticed and the public will be encouraged to participate; if the City Council votes to designate the property, then it will be listed in the Melbourne Register of Historic Places; if an owner of a designated property contemplates making improvements to an historic property, he/she must obtain

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a certificate of appropriateness from the board; examples include additions, substantial alterations, relocations and new construction within an historic district; and a certificate would not be required for routine maintenance/repairs.

“Appropriate” is determined by the 1976 Secretary of the Interior Standards for Rehabilitation; the standards serve as guidelines and emphasize the retention of the original building elements with replacement only when the original material is not salvageable; the standards discourage the use of building elements that are not consistent with the building’s period of construction; emphasis is placed on the primary elevation, i.e., the public’s view of the property; use of the term rehabilitation as opposed to restoration is key to successful application of the ordinance; rehabilitation allows changes to be made that will enable successful contemporary use of an otherwise obsolescent building; demolition is an irreparable act and the board must look at the relative importance of the building; the board may decide to issue a certificate of appropriateness for demolition but defer its effective date for up to 18 months; and any/all decisions of the board may be appealed to the City Council.

Mayor Goode asked how many cities in Florida have an Historic Preservation Ordinance.

Ms. Uguccioni said she has been told there are more than 200. William Awodey, Vice Chairman of the Historic Preservation Advisory Committee, said that they don’t know the number; however, they do know that Melbourne is one of the larger cities that does not.

Mayor Goode asked what age qualifies a property. Ms. Uguccioni said the National Historic Preservation Act of 1966 provides that properties less than 50 years old shall not be considered. Mayor Goode said that probably 90% of the properties in Downtown Melbourne and Eau Gallie would qualify under the ordinance. He added that the property owners in those districts have an additional level of bureaucracy with the Architectural Review Board. He asked if this additional burden was taken into consideration.

Ms. Uguccioni confirmed that this was considered. They met with the Architectural Review Board and suggested that the Historic Preservation Officer be authorized to bring an item before that board for recommendation; the applicant would not have to make an appearance.

Mayor Goode stated that he has no problem with the provision that allows a property owner to request a designation. He noted that he owns a Downtown Melbourne property that is 85 years old and a home that is over 60 years old. And, he does not want anyone to tell him that he may or may not sell his home without approval of a board.

Ms. Uguccioni said that the board would not have any jurisdiction over the sale of property; however, the board would have the opportunity in the ordinance to bring forward a designation if they feel a property is imperiled and of great significance. It leaves the ball in Council’s court to make a decision.

Mayor Goode said that the vision for this ordinance began when CVS drug store wanted to buy Miguel’s restaurant. He asked what power the Historic Preservation Ordinance

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has to buy this property if the board does not want the property torn down. Ms. Uguccioni said that CVS may have asked to buy the property because they needed additional space. Potentially, there could be an addition on the building, or the building could have been converted. Perhaps the property owner wouldn't have sold the property if he had options to do something else.

Mayor Goode asked if there is a mechanism for the City to buy the property to preserve it. Ms. Uguccioni said there is no mechanism to do that. However, the ordinance does allow the board to recommend variances from the Code for floor area, off street parking, etc. These are powerful tools that allow the site to be maximized, yet preserved.

Mr. Contreras asked how this ordinance could result in affordable housing, as mentioned during the overview of the ordinance. Ms. Uguccioni said in some cities, the city has encouraged developers to take over blighted areas and rehabilitate them for use in federal programs – programs that allow corporate tax incentives.

Mr. Contreras noted that only 12 comments have been received, with one of those being anonymous. He views this as total of 11 since he doesn't count anonymous comments. Ms. Uguccioni said it is her understanding that staff kept track of all comments made and to her knowledge, this is the total number.

Council Member Kathy Meehan asked if an historic building has to provide an elevator to meet ADA requirements, even if this would result in a hardship on the owner. Ms. Uguccioni said there is an architect in the state office who works with ADA requirements. Compromises can be made. In some cases a common area has been provided where all tenants have a place to meet with a client.

Council Member Mark LaRusso said he received two communications from people in his district, which includes the Old Eau Gallie area. Some of their concerns relate to the involuntary designation. One man and his daughter own two boat houses on the Eau Gallie River. Their homes were constructed many years ago and would fit the criteria; however, they are opposed because they don't want to be told what, when, where and how they can use their property.

The other communication is from the owners of the Old Pineapple Inn (correspondence from Robert and Celeste Henry distributed to Mayor & Council), which has been designated in the National Register of Historic Places. They have brought up many different concerns.

Mr. LaRusso said he believes the intent of the ordinance is solid and good. We need common sense methodology, but there are restrictions in the ordinance that concern him. He asked where the 18-month time limit came from on delaying a certificate of appropriateness.

Ms. Uguccioni said that came from her personal experience in working with a property that is scheduled for demolition. Six or 12 months is simply not enough time to arrange alternative schemes. She added that this number is not set in stone.

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Mr. LaRusso asked Ms. Uguccioni to comment on the designation of structures that are 50 years or older. Ms. Uguccioni said the 1966 act is the benchmark. In 2005, properties could be historic if built in 1955. She added that she knows what 1955 homes look like and they are not distinctive. That period of time resulted in mass produced, cookie cutter houses and HUD formula houses constructed for returning GIs. The likelihood of a home from this period being designated is absolutely minimal because we don't understand yet the importance of the 1950s subdivision. She agreed that this does not give Council a sense of comfort and noted that language may be changed.

Ms. Uguccioni said that the 1966 act is up for reauthorization. Highways are going through and surveyors are saying that 1955 neighborhoods are historical; this is creating a virtual quagmire. There is discussion about changing that number to be 75 years of age or older. She added that she is speaking without authorization on this subject.

Mayor Goode said that once this makes it to the agenda for formal action, he intends to make a motion that there be no involuntary designation of properties – whether they are 50, 75 or 100 years old.

Ms. Uguccioni said one of the goals staff indicated was for the City to be a Certified Local Government. She said that Melbourne does not have to be one; however, it would be considered a privilege to be with the other 52 jurisdictions that are. The ordinance has been written to meet the criteria for a Certified Local Government. There is certain grant funding that only Certified Local Governments may apply for.

Mr. LaRusso said he is concerned about the creation of districts. He recommended that the City take baby steps on this process, especially since this deals with property rights issues.

Ms. Uguccioni said one of the difficulties in adopting this ordinance is that the City does not have a track record. People are being asked to put their faith in a board that has not yet been constituted. There is huge merit in this ordinance as part of the City's development programs and adoption is a wise move.

That concluded questions/comments. Mayor and Council thanked the board members, staff and Ms. Uguccioni for their hard work on this ordinance.

Mr. Schluckebier said if Council is interested in seeing this ordinance advance, the plan would be to return it in the next 60 – 90 days. If there is consensus about the creation of districts or the involuntary designation, staff could devise higher thresholds for those. For example, creation of an historic district requires a 6/7 vote by the board – that may not be substantial enough. Supermajority voting requirements could be extended to the Council level as well.

The City Manager said that there is nothing wrong with taking it slow. We have an excellent structure of an ordinance and Council may want to provide staff direction on tailoring.

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A brief discussion followed on the involuntary designation portion of the ordinance. Mr. Contreras said that in an effort to save time at a future meeting, he believes it would be prudent for staff and the committee to look at that sticking point. He added that he believes that is a make or break point.

Mayor Goode asked the City Manager to comment.

Mr. Schluckebier said that Ms. Uguccioni raised the significance of being a Certified Local Government. He asked her to comment on the removal of the “involuntary designation” portion of the ordinance.

Ms. Uguccioni said that jurisdictions with ordinances that have only the owner consent provision may be a Certified Local Government.

Mr. LaRusso asked for a comment on hiring an Historic Preservation Officer at \$40,000 per year. Mr. Schluckebier said that based on the experience of a number of cities, it is not staff’s opinion that this position would require a full time staff person. There are people who do this on a consulting basis. Expertise in the range of \$12,000 - \$15,000 per year would probably be satisfactory.

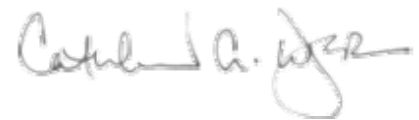
Moved by Contreras/Goode to fashion the ordinance to exclude any involuntary taking. Motion carried unanimously.

With regard to the involuntary designation, Mrs. Hand asked how this is different from eminent domain. Ms. Uguccioni said that the Miami Parrot Jungle case is often referenced. The court decided that it is not a taking to designate an historic property.

5. **Adjournment**

Moved by Contreras/Walker to adjourn. Motion carried unanimously.

The meeting adjourned at 9:04 p.m.



City Clerk – 9/7/2005

Approved by Council: September 13, 2005