

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
SEPTEMBER 13, 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 7:00 p.m. by Mayor Harry C. Goode, Jr.

1. Council Member Grace Walker 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	Deputy City Manager
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

None.

5. Approval of Minutes - August 23, 2005 Regular Meeting  
August 30, 2005 Workshop Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier reported on the following:

- The City Clerk's Office, with the assistance of the Institute of Government at the University of Central Florida, conducted an "Effective Advisory Boards" training class at Front Street on August 25. Approximately 55 people attended, including 18 members of staff. This follows the direction of City Council after a review of committee issues about six months ago. The communication in the report from the City Clerk includes a number of recommendations from the Institute of Government about boards and committees that will be helpful for the various boards and the City Council.

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- In response to a request from Vice Mayor Contreras, information was recently circulated to Council regarding the possibility of installing an automated red light citation system. It is the City's opinion that the State Statutes do not contain authorization for municipal agencies to undertake that kind of program. However, this does not mean that we can't enter into an experimental program using warning notices. Unless the Legislature changes the laws or the Attorney General changes his opinion on statutory authorization, we would not be able to pursue fines or penalties if we used an automated system.

Vice Mayor Contreras asked Council to comment on whether there would be value added by installing a camera system at selected intersections and sending warning notices to drivers who run red lights. Council Member Cheryl Palmer said that she does not believe it will be cost effective to simply issue warning notices.

Police Chief Don Carey reported that a corporation from Palmetto, Florida is going to provide Melbourne one camera at no cost. The proposal will be to install this system at our busiest intersection, U. S. 1 and Eau Gallie Boulevard. The City will send letters to the registered owners of vehicles that run red lights imploring the person to be more careful. This will also allow data to be collected as we pursue changes in current legislation.

In response to Mrs. Palmer, Chief Carey said there will not be software/maintenance costs involved. The costs will be in office time preparing and mailing letters.

Mr. Contreras asked that staff inform Council when the system is installed and provide information on the data collected on red light runners. Chief Carey replied that he would be happy to do this.

Mr. Contreras commended the City Clerk and her staff on the board training class. Moved by Contreras/Walker to adopt the six recommendations made by Marilyn Crotty from the Institute of Government outlined in a memorandum dated August 26, 2005 from the City Clerk to the City Manager. The roll call vote was:

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

Motion carried unanimously.

For information, the recommendations outlined in the memorandum are:

- Each year boards should conduct a self-evaluation. They should discuss how they are functioning, attendance, participation, etc. And, they should also look at their composition and determine if the group is diverse and represents the community as a whole. If not, the board should make a recommendation to City Council to strive for a person with a particular background to be appointed during the next vacancy.

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- The City should conduct an assessment on its boards to determine if any boards have outlived their usefulness. There may also be opportunities to combine the duties of two or more boards.
- The City should re-think its Code provision that allows for “excused” absences. Ms. Crotty stated that an absence is an absence and a board can’t function properly if members aren’t attending.
- The Chairman of each board should annually make a brief presentation to City Council (she recommended three to five minutes). The other board members should be present in the audience. This would provide an opportunity for the board to review its accomplishments, highlights and challenges with City Council and answer any questions.
- Every board should have a “job description” – preferably written by the board members. This helps applicants determine whether they are interested in making application for a particular board.
- Although orientation is conducted with new members, staff should strive to conduct a periodic orientation with each board to review the basic laws plus any new ordinances, regulations, procedures, etc.

Vice Mayor Contreras thanked Chief Carey and Fire Chief Paul Forsberg for the tremendous amount of information provided on the County-wide emergency communications system. He noted that the Fire Department provided a detailed list of radio equipment and its various lifecycles. Mr. Contreras asked Chief Carey if his department has taken a similar look at its equipment.

The Police Chief replied that the radio products in the Police Department, ranging from the hand-helds to the mobiles, operate at a level the department is comfortable with. The Police Department maintains a replacement schedule and staff feels that the radios are more than adequate to meet our needs.

Chief Forsberg agreed with Mr. Contreras that a replacement schedule beginning in 2005-2006 will be necessary. The Fire Chief added that Nextel may be replacing some of the radios without a cost to the City. However, if they do not, a proposal will be made to begin replacing the older stock. Mr. Contreras said that the purpose of bringing this to the attention of Council and staff is that this is going to be an expensive proposition.

Mr. Contreras concluded by referencing information in the agenda material from Communications International, Inc. about a proposed building code change requiring that buildings and structures “not interfere with the 800 MHz communications network.” He suggested that the City consider Code language relating to the construction of buildings and structures that would enable our fire and police responders to communicate inside of a building.

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7. Public Comments

Jose Berdiel, 1433 Palmwood Drive, recommended that the City consider establishing a fund where each citizen could donate \$5. If the City is faced with a disaster like Hurricane Katrina in the future, the fund would enable us to help ourselves.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2005-81 (LDR-2005-01/FOC-2005-01) PARKING REGULATIONS: (Second Reading/Public Hearing) An ordinance amending Appendix D, Chapter 9, Parking Regulations, amending land use type and off-street parking ratio requirements; establishing a downtown parking trust fund and providing for a fee in lieu of; amending the procedure for calculating the required number of spaces and minimum standards of design of off-street parking areas; and establishing a public parking surcharge fee. (Applicant - City of Melbourne) (First Reading - 8/23/05)

City Attorney Paul Gougelman read Ordinance No. 2005-81 by title. At the request of Mayor Goode, Attorney Gougelman read a letter into the record from Dr. Richard Hynes, Hynes Properties, LLC. Mr. Hynes included the following recommendations in his correspondence: provide a credit when a developer creates public parking in excess of what is required by Code; use a “volumetric” formula for calculation of the fee; allow developers to mitigate the requested height increase with a deed restriction on another property zoned the same in the City; and apply the ordinance City-wide so it does not discourage development in one area and encourage it in another.

The Mayor opened the public hearing.

Charles Kiessling, 2908 Riverview Drive, said he believes that this regulation will encourage builders to plan for higher buildings. He added that the fee would not have an impact on a builder and would probably be lost in the “petty cash.” He suggested that the fee be structured to increase rapidly as the height increases. Mr. Kiessling concluded by recommending that Melbourne keep its low profile skyline.

Moved by Goode/Walker for approval of Ordinance No. 2005-81.

Mayor Goode said that Council discussed applying the fee City-wide; however, the decision was made to start the ordinance in the two Downtown areas. He added that, if we see a lot of growth in the other areas, the ordinance can be revised.

Council Member Loretta Hand said she does not intend to support the ordinance because it allows for 10' wide parking spaces that are assigned and enclosed. She explained that if someone is going to pay \$500,000-plus for a condominium, they should not be assigned a space so narrow that their car will get dented.

Mr. Contreras asked staff to comment on Dr. Hynes' letter. Mr. Schluckebier said that the letter was received today and staff hasn't had an opportunity to consider the concepts. He added that there are points in the letter that make sense. Additionally, if this is going

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to be treated as an impact fee, there will be somewhat of a direct obligation for us to give credits where someone in the course of developing creates public parking.

Attorney Gougelman said that we have previously talked about a planning study with regard to this fee. And, it will need to include a mechanism to provide credit to someone who builds parking spaces that are open to the public.

A brief discussion followed regarding the various versions of Dr. Hynes' site plans.

In response to Mr. Contreras, the City Manager confirmed that staff is reviewing any other fees related to the impact of height, including firefighting personnel, equipment, etc. Information will return to Council in the next 45 days.

The question was called. The roll call vote was:

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

Nay: Hand

Motion carried.

9. ORDINANCE NO. 2005-100 (CU-2005-08/SP-2005-17) PRINCETON MINI-STORAGE, PHASE TWO: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a mini-storage facility on a 4.123-acre site zoned C-1 (Neighborhood Commercial), located on the west side of Dairy Road, north of Palm Bay Road, and south of Eber Boulevard. (Owner/Applicant - Princeton Florida Associates, LLC) (Representative - Robert Lee, PE, Lee Engineering, Inc.) (First Reading - 8/23/05)

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

Moved by Palmer/Meehan for approval of Ordinance No. 2005-100. The roll call vote was:

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

Motion carried unanimously.

10. ORDINANCE NO. 2005-101 (CU-2005-05/SP-2005-10) GRAND MEADOWS C-STORE CARWASH ADDITION: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a carwash addition to an existing gas station/convenience store on a 1.38±-acre lot zoned C-2 (General Commercial), located on the west side of Wickham Road, north of Parkway Drive, and south of Post Road. (Owner/Applicant - Sarju Corporation) (Representative - Luke Miorelli, ME Construction, Inc.) (First Reading - 8/23/05)

Attorney Gougelman read Ordinance No. 2005-101 by its title.

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Luke Miorelli, representing the owner/applicant, distributed two photographs showing the area behind the wall near the retention pond. He said that at the last meeting concerns were raised about the maintenance behind the gas station property. He reported that he went by the site and found that the area had recently been mowed. The lawn service was not maintaining the area around the pond because of “no trespassing” signs posted by the homeowners’ association. Mr. Miorelli stated that the area is grassed, irrigated and is being maintained.

Mayor Goode said he can’t see the gas station in the photos. Mr. Miorelli said that the photographs show that the adjacent homeowners will not be able to see the carwash.

Mrs. Hand asked how the area residents feel about this. She noted that they did not want a convenience store at this location to begin with. Mr. Miorelli said he does not know whether they are for or against it; he has not conducted a poll.

Council Member Kathy Meehan asked if the back of the wall is painted. Mr. Miorelli said yes and noted that it is stained from the sprinkler system. She commented on the condition and asked if the owner will paint the wall. Mr. Miorelli said he probably will now that it has been brought to his attention.

Mr. Contreras asked if the owner has gone out and explained his plan to the residents.

Nick Patel, owner/applicant, said he has not gone into the neighborhood; however, he noted that many of his customers are from the area. He added that only three people have objected; most are very happy.

Mr. Contreras said that the residents are not happy about another access on Grand Meadows Boulevard. Mr. Patel replied that he spoke to the current president of the homeowners’ association and showed him the site plan. And, he does not have a problem with the plan.

Mayor Goode called for disclosures. There were no disclosures from Council.

Jacqueline DeGaetano, 3785 Grand Meadows Boulevard, said that the site currently has a gas station, truck rental and propane tanks. She added that she is concerned about runoff from the carwash. The St. Johns River Water Management District cited Baymeadows because its wetlands were in violation of the regulations. The homeowners paid \$15,000 to bring them up to par. She stated that she believes that because of the grade, runoff from the carwash will run into the street and into the pond, which leads to their wetlands. Ms. DeGaetano concluded by pointing out the proximity of the school bus stop in this area.

John Klein, 3676 Kestrel Court, stated that the grass behind the facility has not been maintained/cut in the 7 ½ years that he has lived here. The wall is in need of paint and no maintenance was done until this item came up before Council. The plan provides for a portion of the landscape island to be removed, which the homeowners have been maintaining. That, along with the traffic on Grand Meadows Boulevard, is a concern. He

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agreed that the grade of the property will present a problem with the wetlands. He asked Council to consider these issues and vote against the carwash addition.

Mitchell Chuckran, 3677 Kestrel Court, agreed with concerns raised by the previous speakers. He added that traffic is a problem for people trying to enter/exit the Baymeadows community. Additionally, the MARSOL development will go in next year and will have a big impact on the area.

Moved by Hand/Contreras for denial of Ordinance No. 2005-101.

Mrs. Palmer stated that this business has a conditional use for gas and the site contains a convenience store, gas station, propane sales and truck rentals. She said she has a problem with crowding all of these businesses onto one conditional use site. And, she is opposed to the curb cut onto Grand Meadows Boulevard.

Mr. Contreras said that he frequents this business; however, adding another operation to the convenience store, trucking operation and propane sales presents a tight squeeze. This along with another egress onto Grand Meadows Boulevard is a bad combination.

Mrs. Hand agreed and said she is also concerned about runoff into the wetland area. Mrs. Walker concurred.

The question was called. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

11. COUNCIL ACTION RE: Contract award for the Ballard Park shoreline restoration, Project No. C05126, Santa Cruz Construction, Merritt Island, FL - \$189,605 and a transfer of \$208,566 from Appropriation from Fund Balance in the General Fund to establish a budget for this project.

City Engineer Jenni Lamb reviewed the agenda report.

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

12. COUNCIL ACTION RE: Water Treatment Plant Project
- a. Approval of payment to CH2M Hill in the amount of \$75,000 for additional work on the surface water treatment plant design.
  - b. Consultant to provide services during the construction phase of the Phase II Water Treatment Plant Project.

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**ITEM A.** The City Manager provided a brief overview. He noted that staff has left open the possibility of additional remuneration if all problems are resolved during the Phase II work.

Moved by Palmer/Hand for payment of \$75,000 to CH2M Hill for additional design work on the surface water treatment plant Phase II project.

Mr. Contreras said that he has a lot of heartburn with this item especially since the City was “tagged” with additional costs for having discussions with the firm on operational problems.

The City Manager confirmed for Council Member Grace walker that the additional work has been measured accordingly and this amount is appropriate to pay.

The question was called. The roll call vote was:

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

Nay: Contreras

Motion carried.

**ITEM B.** Mr. Schluckebier briefed Council. This item relates to the engineering services during construction and post-construction phases of the Phase II surface water treatment plant project. CH2M Hill designed the project and staff bid the Phase II work as designed. We have been negotiating with the firm since July 2005 for services related to the construction project. The City does not believe that it can come to a satisfactory conclusion as to the amount of the contract and the work covered by that contract. Further, CH2M Hill has qualified its final proposal based on the City’s hiring of the second low bidder for the construction work – not the low bidder.

The recommendation is for approval of the termination of negotiations for construction phase related services with CH2M Hill and that Council authorize the City Manager to direct the selection of a new consultant who is most qualified to provide these services and to negotiate a fee proposal with that consultant.

Mr. Schluckebier concluded by saying that the proposal will be brought to City Council for final approval.

Mayor Goode referenced the offer dated September 13 from CH2M Hill. He questioned how the company could propose different rates for services depending on the company selected for the construction work.

Ed Davis, Vice President, CH2M Hill, stated that his firm has enjoyed serving the City throughout this project. And, they believe they have been looking out for the City’s best interests. As a result of the bid results, they submitted a letter to staff today summarizing

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the issues. The low bidder on the project, Meadors Construction, notified the City that it has a material and substantial defect in its bid and asked to be relieved from that bid. CH2M Hill traveled to Meadors' office and confirmed that it had a material defect in the bid in the amount of \$550,000. The City intends to award to Meadors contrary to CH2M Hill's recommendation. Additionally, any change that will allow Meadors to increase its price could result in a bid protest.

Continuing, Mr. Davis said that the majority of Meadors' references are negative. He elaborated on the references and said that Meadors is claims oriented and significantly late in the delivery of projects. Selection of Meadors could result in a long and costly process for CH2M Hill and the City.

Mr. Davis stated that he believes it would be in the best interest of the City for CH2M Hill to continue working on this project. They bring more experience in ozone treatment than any other consultant. And, a different consultant would not have the insight in applying ozone to water from Lake Washington. This could result in the water not meeting EPA standards.

Mr. Davis concluded by saying that CH2M Hill's proposal is to reduce the fees to \$1.2 million and add the services of a part time clerk and part time inspector at no additional cost. They also propose a time and materials contract, which will protect everyone involved if this enters into a claims heavy project. If the City feels that this proposal is not in its best interest, CH2M Hill will agree to mutually conclude working on this project.

Mr. Contreras pointed out that the amount of sludge being created on a daily basis is 40% more than CH2M Hill's engineer stated in a technical memorandum and 200% more than what it should be based on the City's current water production rate. This also results in a disposal issue. Mr. Davis explained what could cause sludge volumes to fluctuate.

Following a brief discussion, Deputy City Manager Howard Ralls noted that the production problem is related to the filters and the sludge overproduction is related to a chemical feed problem. They are two different problems, although somewhat related. Mr. Davis added that the sludge issue won't be satisfactory until the end of Phase II.

Mr. Contreras asked staff to comment on Meadors Construction. Mr. Ralls said that the Meadors bid was \$2,177,000 lower than the next bidder. Meadors reported the day after the bid opening that they thought they may have made a material and substantial mistake in putting together their bid amount. The bid documents require them to report that. They showed us their mistakes and we went to their office and reviewed their records. We determined that Meadors made input errors that amounted to \$555,000 in raw numbers with a final total of \$621,500. We are looking at negotiating with Meadors to include the \$621,500 with the original bid as part of the recommendation to award to Meadors. Even at that number, we would be \$1.6 million lower than the second low bidder, which is a substantial amount.

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Mr. Ralls informed Council that none of Meadors clients contacted said that Meadors failed to perform the work. In one project, conflicting comments were made; some said there were a lot of change orders and some said there were none. Mr. Ralls stressed that City staff doesn't recommend change orders unless something is justified. A change order usually means that something not foreseeable was discovered or there is a problem with the construction documents.

Mr. Contreras asked if this was a case of lowballing the bid. Mr. Ralls replied no and pointed out that Meadors contacted the City to withdraw its bid based on the bid documents allowing that.

Mrs. Walker asked why the sludge problem has not been corrected. Mr. Ralls explained that it can only be corrected by modifying the plant and changes are being proposed as part of the Phase II project.

Mrs. Palmer referenced the comment that the ozone treatment can be challenging if not done properly. She asked Mr. Davis if he feels CH2M Hill is the only company adequately qualified to oversee that process. Mr. Davis said there are other firms qualified and he is assuming the City will identify that as criteria during the RFP process. He clarified that CH2M Hill has more experience with ozone in the State of Florida.

Mrs. Palmer said now that CH2M Hill doesn't want to work with our low bidder, we have a plethora of problems. She added that she wants to be assured that if we use Meadors that we will not be left with liens from contractors, etc. Mr. Davis pointed out that their latest proposal indicates that they are willing to work with Meadors if Meadors is selected. Mayor Goode said that proposal is a little late, having been submitted today.

Mayor Goode called for a brief recess. Council recessed at 8:45 p.m. and reconvened at 8:54 p.m.

The City Manager stated that the City has had a good business relationship with CH2M Hill; however, at this juncture, the disparity in opinions is substantial. The recommendation to discontinue with the firm has been summarized and it is an opinion shared by Mr. Ralls, Public Works and Utilities Director Robert Klapproth and City Engineer Jenni Lamb.

Mayor Goode said he is prepared to start from scratch and go through the entire process again. He believes that the bid submitted by Meadors demonstrates incompetence and he is not sure he wants them modifying our plant. He asked for a reason not to move to strike everything and start over.

Mr. Schluckebier said that the award of the bid to Meadors is not in front of Council. Staff believes that Meadors is the low and responsible bidder. Our internal professional staff believes there is no reason to go back out into the market. Mayor Goode asked if Meadors would be the low bidder again if we started over. Mr. Schluckebier replied that he doesn't believe they would leave \$2 million on the table next time.

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Continuing, the City Manager said that it is time to find a different engineering firm to supervise the ultimate choice for the construction contract. We've had that component of the project under negotiations for about three months and staff is no longer satisfied that it is in the City's best interest to proceed on this project with CH2M Hill. We have differences of professional opinion and we don't believe we are able to negotiate what is required to proceed.

Mrs. Hand asked where we would be left in regard to litigation. Attorney Gougelman read the portion of the letter from CH2M Hill submitted today that indicates they would mutually agree to conclude working on this project. Mr. Gougelman said he is assuming that is a forthright, professional way of saying they would like to return in the future and don't look forward to suing us. Mr. Davis agreed.

Mrs. Walker said there is too much confusion on this item for her to be able to make a decision.

The Mayor briefly discussed whether his motion would include "not accepting the bid currently on the table from Meadors." Mr. Contreras said he is not sure we can arbitrarily rule out a potential bidder. The bid is out there and the process is underway. Attorney Gougelman added that he does not believe Council can make the decision at this meeting to approve or reject Meadors because that item is not on the agenda; there is no formal staff recommendation.

Moved by Goode/Contreras to go out and solicit bids to come up with a new consulting engineering firm to work on the Phase II water treatment plant project.

Mrs. Hand said she would support postponing this item until additional information is provided; it is confusing. Mayor Goode agreed that the item is confusing. Mrs. Walker asked if this means that CH2M Hill is terminated. Mayor Goode said that selection of a new firm means the old firm is gone.

Mrs. Hand said it seems as if CH2M Hill is willing to continue working with the City. Mr. Schluckebier said that staff has made reasonable efforts to resolve the dispute as to services and pricing. We don't believe additional discussions will be productive. Mrs. Walker pointed out that Mr. Davis is willing to renegotiate. Mr. Schluckebier said we would have preferred that their proposal be submitted two or three weeks ago during the negotiation process, rather than at this meeting. He confirmed for Mrs. Hand that staff does not find their most recent proposal satisfactory.

The question was called. The roll call vote was:

Aye: LaRusso, Meehan, Palmer, Contreras and Goode

Nay: Walker and Hand

Motion carried.

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13. CONSENT AGENDA:

Mayor Goode referenced the memorandum from staff and reported that Item “I” has been withdrawn.

Mrs. Hand asked that Item “b” be removed and Mrs. Palmer asked that Item “h” be removed.

Moved by Hand/Goode for approval of Items “a through o” with the exception of “b,” “h,” and “I.” Motion carried unanimously.

- a. Inclusion of Parkway Drive Florida East Coast Railway crossing rehabilitation to the current railroad capital improvements project list, Project No. E05605 and transfer of \$50,000 from the Local Option Gas Tax Railroad Crossing Maintenance account into this project budget.

See agenda Item #14 for action on following item:

- b. Supplement No. 254 to the Continuing Consultant’s Contract for engineering services to provide traffic signal re-timing on U.S. Highway 1 from Sarno Road to Aurora Road and in Downtown Eau Gallie, Project No. 05612, Frazier Engineering, Melbourne, FL - \$29,658.
- c. Approval of an Option and Lease Agreement with New Cingular Wireless PCS, LLC d/b/a Cingular Wireless to allow the installation of wireless communication antennas and equipment at the City of Melbourne’s elevated water storage tank site in Indialantic and authorization for the City Manager to execute the documents; initial option - \$1,500, annual lease revenue - \$30,000 if option is exercised.
- d. Amendment to agreement between the City of Melbourne and Brevard County for utility billing and collection services, reflecting the refund of deposits to residential customers.
- e. Approval of an \$80,000 increase to the Community Housing Initiative’s award for the Purchase Assistance Program and authorization for the City Manager to execute the documents.
- f. Approval of an award to Habitat for Humanity of Brevard County, Inc. in the amount of \$190,000 in FY 2004-2005, 2005-2006, 2006-2007 SHIP funds for the administration of the Purchase Assistance Program with Sweat Equity Strategy; and authorization for the City Manager to execute the documents.
- g. Approval of revised policies for the Homeowner Housing Rehabilitation Program, the Homeowner Housing Reconstruction Assistance Program, the Purchase Assistance Program, and the Rental Development Program.

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See agenda Item #14 for action on following item:

- h. Approval of transmittal of legislative ideas to the Space Coast League of Cities for prioritization by that group.
- i. Authorization for the City Manager to execute a Use Agreement with Brevard County for the City of Melbourne's continued control and use of Lipscomb Park for public recreational purposes for a minimum term of 25 years.
- j. Approval of a 36-month lease of two Toshiba e-Studio 4511 Digital Color Copier/printer/Fax Scanning Systems, Toshiba Business Solutions, Atlanta, GA - \$26,632.08, plus copy charges.
- k. Purchase of replacement Flygt lift station pumps, control panels, and parts, Ellis K. Phelps, Apopka, FL - \$62,067.

The following item was removed from the agenda at staff's request:

- l. Purchase of eight Panasonic Toughbook 51 laptop computers, Insight Public Sector, Tallahassee, FL - \$15,152.
- m. Purchase of replacement AUMA valve actuators for the RO facility, Diller-Brown & Associates, Inc., Winter Park, FL - \$21,549.76.
- n. Purchase of a Detroit Diesel Spectrum 30DSEJB generator, weather enclosure, fuel tank, and transfer switch, Florida Detroit Diesel-Allison, Orlando, FL - \$15,825.
- o. RESOLUTION NO. 1948: A resolution implementing FY 2004-2005 Third Quarter Budget Review recommendations for the Airport Authority.

14. ITEMS REMOVED FROM THE CONSENT AGENDA

- b. Supplement No. 254 to the Continuing Consultant's Contract for engineering services to provide traffic signal re-timing on U.S. Highway 1 from Sarno Road to Aurora Road and in Downtown Eau Gallie, Project No. 05612, Frazier Engineering, Melbourne, FL - \$29,658.

Mrs. Hand said that she is pleased this work is being done; however, she wants to be certain that pedestrians will have a chance to cross the various streets safely. Mr. Schluckebier said that Engineering staff has assured that the timing changes will not occur at the expense of pedestrians; they will provide for better consistency in the corridor.

Moved by Hand/Walker for approval of Item "b." Motion carried unanimously.

- h. Approval of transmittal of legislative ideas to the Space Coast League of Cities for prioritization by that group.

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Mrs. Palmer said that she takes issue with a couple of the ideas mentioned and wanted the opportunity to vote on this item separately. Mr. LaRusso said he has always had a problem with the legislative initiatives of the Space Coast League of Cities.

Moved by Goode/Hand for approval of Item “h.” The roll call vote was:

Aye: Meehan, Walker, Hand, Contreras and Goode

Nay: LaRusso and Palmer

Motion carried.

15. COUNCIL DISCUSSION RE: City Attorney’s report, “Sexual Predators and the Use of Residency Restrictions to Control Recidivism.” (Requested by Council Member Mark LaRusso)

Mr. LaRusso thanked the City Attorney for preparing an outstanding, professional report that is to the point and unbiased. He said his purpose for discussing residency restrictions is to provide protection for our children. The State of Florida does not permit predators (convicted after October 1, 1995) to live within 1,000 feet of a school, day care facility, park, playground, designated public school bus stop or other place where children congregate. At least 40 municipalities in Florida are considering adopting residential restrictions of up to 2,500 feet. Regarding the constitutionality, the 8<sup>th</sup> Circuit Court of Appeals – the last stop before the U. S. Supreme Court – has declared as constitutional an Iowa statute that provides residential restrictions of 2,000 feet from any school or child care facility for certain sexual predators.

Continuing, Mr. LaRusso referenced the report and said that the recidivism rate is higher among child molesters than any other criminal group. A key conclusion is that proximity breeds opportunity. He stated that the first part of his proposal is to instruct the City Attorney to prepare an ordinance that increases the residency requirement to 2,000 feet for newly convicted felons. It is not his intention to move people from their existing homes.

Mr. LaRusso said that the second part of his proposal relates to check-in times. Under the Jessica Lunsford Act in Florida, sexual offenders and predators must check in with law enforcement every six months. He is recommending that Melbourne require a three-month registration/check in. Mr. LaRusso noted that the Police Department is open 24/7; therefore, he does not see this as a burden.

Mr. LaRusso concluded by asking Council to remember the victims of sexual offenders and predators. He commented that the proposed ordinance is the right thing to do and will make the City a better place to live.

In response to Mayor Goode, Attorney Gougelman said that probably 40 or 50 municipalities in Florida have adopted a residency restriction that is greater than the

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State Statute requirements. The common thread is to calculate residency restrictions “x” number of feet away from a public school, public park, and child care facility. Some cities have included school bus stops; however, that is difficult to calculate. City staff had difficulty finding all the bus stops in the County. And, they change periodically.

Mr. Gougelman said that an argument can be made that counties and municipalities have the right to be more restrictive. The current Florida law requires a distance requirement of 1,000 feet. There is also the argument that we have a very complete system in the Statutes now describing how predators and offenders will be penalized, incarcerated, whether they wear GPS, etc. A court could possibly say that the legislative scheme is so complete that they have impliedly preempted local government. However, he said he believes that a court more likely than not would not take that position.

Mayor Goode reported that the late Representative Futch worked extremely hard to pass laws in Florida that would pass the muster relating to sexual predators. The Mayor said it would be his personal preference to keep predators and offenders locked up. He is concerned about how law enforcement will regulate each city having a different restriction.

Mr. LaRusso said that is why he proposed the second part, which is a check-in requirement. Mr. LaRusso asked Attorney Gougelman if any ordinances in Florida with increased residency restrictions have been challenged.

Attorney Gougelman said no; however, there has not been enough time for those laws to go into effect. Most were not adopted until late summer. Dade County was considering an ordinance requiring 2,500 feet; however, they choked at the last minute when they saw that this would exclude most locations. The ACLU has been making noises and it will look for the weakest ordinance to challenge.

Regarding check-in, Attorney Gougelman said there may be a problem. The State has a requirement as to who predators must check in with, and that is state-funded employees, not local police. This may be considered a reverse mandate where the City is going to tell the State when check-in will be required.

Mr. LaRusso asked if the Melbourne Police Department would be able to qualify as a place for check-in. Attorney Gougelman said he does not know the answer to that.

Mayor Goode asked how we can have existing rules for the horrible people who already live here but have new regulations for the new pervert that moves to Melbourne. Mrs. Palmer said that the new ones don't have to move into the City; there would be a choice. Mr. LaRusso added that the Statutes already provide two distinct sets of rules depending on when someone committed the crime.

Chief Don Carey confirmed for Vice Mayor Contreras that our Police Department knows the address of predators and offenders in the City of Melbourne.

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Mr. Contreras stated that he appreciates Mr. LaRusso wants to tighten the regulations. However, he is concerned that we would burden our local Police Department by providing an additional check in requirement. Mr. LaRusso said that given the challenges he has heard on the check in requirement he will take this off the table and work with the City Attorney. Mr. Contreras asked why and Mrs. Palmer encouraged Mr. LaRusso to give the check-in requirement a shot.

Mr. LaRusso said he would like to proceed with an ordinance to increase the buffer zones to 2,000 feet around designated spots on the map provided by the City Attorney. Mayor Goode recommended that we follow the locations listed in the statute. Mr. Gougelman said the statute includes bus stops and areas where children normally congregate.

Moved by LaRusso/Palmer to require a three-month registration/check-in and increase the buffer zones around day care centers, schools and public parks from 1,000 feet to 2,000 feet. The roll call vote was:

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

Motion carried unanimously.

Mayor Goode stated that the City Attorney will draft an ordinance and return to Council for action.

16. FINAL PLAT APPROVAL (SD-2002-08B) ALAMANDA KEY SUBDIVISION, PHASE TWO (FKA REFLECTIONS AT THE FOUNTAINS SUBDIVISION): (Public Hearing) A request for approval of a final plat to develop Phase Two of the Alamanda Key Subdivision on a 25.69±-acre portion of a 46.49±-acre parcel zoned PUD (Planned Unit Development), located west of Stack Boulevard, south of Eber Road, and north of Palm Bay Road. (Owner/Applicant - Tom Vani, Managing Member, Alamanda Key, LLC) (Representative - Joseph W. Mayer, Bussen-Mayer Engineering Group Inc.) (P&Z Board - 8/18/05)

Planning & Economic Development Director Cindy Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the final plat, consisting of a four-page plan prepared by Bussen-Mayer Engineering Group of Merritt Island, Florida, Survey Department Number 298417, with a stamped and sealed date of August 10, 2005, pursuant to the findings outlined in the package and the following conditions:

- a. Any change to the final plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department.

Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the final plat includes, but is not limited to: 1) an increase of more than four lots; or 2) any change in the street network or retention pond location.

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- b. A six-foot staggered block wall shall be installed along the north property line, in Tract F-1 continuing from Phase 1 to the western edge of the plat, prior to the issuance of the Certificate of Completion on the subdivision improvements. The fence shall be maintained by the Alamanda Key Homeowners' Association.
- c. The applicant shall not be entitled to record the final plat until all subdivision improvements are constructed to the satisfaction of the City, or an improvement guarantee of at least 110% is provided to the City to ensure the completion of the improvements.
- d. Provide the additional required documents, pursuant to Appendix D, Chapter 8, Section 8.5 (c) (4) prior to plat recordation.
- e. Provide the additional required information and certificates as required by F.S. 177.071 and 177.081 prior to recordation of the final plat.
- f. Tract I shall be dedicated to the City of Melbourne prior to or in conjunction with the recording of the final plat.
- g. Only one building permit may be issued on any portion of the plat prior to recordation of the final plat.

The applicant was present and available for questions. There were no disclosures by Council and no comments from the public.

Moved by Contreras/Walker for approval subject to the findings and conditions outlined in the agenda package. Motion carried unanimously.

17. FINAL PLAT APPROVAL (SD-2003-03) LAKE WASHINGTON BUSINESS CENTER:  
(Public Hearing) A request for approval of a final plat to develop Lake Washington Business Center on a 10.361-acre parcel zoned M-2 (General Industrial), located on the east side of Wickham Road, south of Lake Washington Road, and north of Electronics Drive. (Owner/Applicant - Victor Osman, Trustee of the Victor Osman Revocable Trust) (Representative - Phil Nohrr) (P&Z Board - 8/18/05)

Mrs. Dittmer briefed Council. The Planning & Zoning Board voted unanimously to recommend approval of the final plat, consisting of a one-sheet plan prepared by WJS Land Surveying of Palm Bay, Florida, with a stamped and sealed date of August 5, 2005, with the findings outlined in the agenda package and the following conditions:

- a. Any change to the final plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department.

Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the final plat includes, but is not limited to an increase of more than one lot.

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- b. The applicant shall not be entitled to record the final plat until all subdivision improvements are constructed to the satisfaction of the City, or an improvement guarantee of at least 110% is provided to the City to ensure the completion of the improvements.
- c. Provide the additional required documents, pursuant to Appendix D, Chapter 8, Section 8.5 (c) (4) prior to plat recordation.
- d. Provide the additional required information and certificates as required by F.S. 177.071 and 177.081 prior to recordation of the final plat.
- e. Only one building permit may be issued on any portion of the plat prior to recordation of the final plat.

The applicant's representative, Attorney Phil Nohrr, was present and available for questions. There were no disclosures by Council. Mayor Goode opened the public hearing.

James Teele, 2442 Empire Avenue, Kingsmill Homeowners' Association Board of Directors member, spoke in support of the project.

Moved by LaRusso/Meehan for approval, subject to the findings and conditions noted in the agenda package. Motion carried unanimously.

18. FINAL PLAT APPROVAL (SD-2004-11) OAK HAMMOCK ESTATES SUBDIVISION: (Public Hearing) A request for approval of a final plat to develop a 28-lot, single-family development on a 43±-acre parcel zoned REU (Rural Estate), located on the northwest corner of Lake Washington Road and McGraw Avenue. (Owners - Hoekstra Family Limited Partnership #1) (Applicant - OHE Development, LLC) (Representative - Mike Renfro) (P&Z Board - 8/18/05)

Mrs. Dittmer briefed Council. The Planning & Zoning board voted unanimously to recommend approval of the final plat, consisting of a three-page plan prepared by Cantelou & Powell Inc., with a signed and sealed date of August 5, 2005, and the following conditions:

- a. Any change to the final plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department.

Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change includes, but is not limited to: 1) an increase of more than two lots; or 2) any change in the proposed access to the subdivision.

- b. Upon completion of the subdivision improvements, the applicant/developer shall file a map amendment with the Federal Emergency Management Agency to correctly

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identify the flood zone designation/elevation of the property as a result of the improvements. Copies of the changes approved by FEMA shall be provided to the Planning and Economic Development and Engineering Departments, and the Code Compliance Division.

- c. The applicant shall not be entitled to record the final plat until all subdivision improvements are constructed to the satisfaction of the City, or an improvement guarantee of at least 110% is provided to the City to ensure the completion of the improvements.
- d. Provide the additional required documents, pursuant to Appendix D, Chapter 8, Section 8.5 (c) (4) prior to plat recordation.
- e. Provide the additional required information and certificates as required by F.S. 177.071 and 177.081 prior to recordation of the final plat.
- f. Only one building permit may be issued on any portion of the plat prior to recordation of the final plat.

There were no disclosures by Council and no comments from the public.

Moved by Hand/Meehan for approval subject to the findings and conditions outlined in the agenda package. Motion carried unanimously.

19. ORDINANCE NO. 2005-102 (A&V NO. 285): (First Reading/Public Hearing) An ordinance vacating the westerly 1.5 feet of a 10-foot wide easement along the east side lot line at 2800 College View Drive. (Applicants - Donald & Venita Dobbs)

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

Moved by Contreras/Walker for approval of Ordinance No. 2005-102. Motion carried unanimously.

20. ORDINANCE NO. 2005-103 (CU-2005-02/SP-2005-07) NEXTEL COMMUNICATIONS: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to develop a monopole cellular tower on a portion of a 1.81-acre site zoned C-2 (General Commercial), located on the north side of Sarno Road, east of Wickham Road. (Owner - Don Bell Incorporated) (Applicant/Representative - Wid T. Bell, President; Franco Lugo) (P&Z Board – 8/18/05)

Attorney Gougelman read Ordinance No. 2005-103 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of this request. There were no disclosures by Council and no comments from the public.

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Franco Lugo, applicant, responded to Mr. Contreras that the tower can accommodate 12 antennas, and it will have the structural capacity to accommodate additional co-locations. The most visual impact is going to be three of those antenna arrays on one pole.

Mr. Contreras asked the probability of dressing up a tower to look like a tree. He noted that this is being done in other parts of the country. Mr. Lugo replied that the disguised poles are typically shorter than a 120' tall tower. They haven't come up with this technology on a significant structure.

Mrs. Palmer asked if it is safe to have antennas close to residential areas. Mr. Lugo replied that with regard to physical safety, the towers are built to exceed catastrophic winds of 130 mph. On the health related issue, that is continuously being studied and the conclusions are that these are not physically harmful or hazardous to humans. He added that the federal government has preempted that question – that is how vast the amount of studies. There are guidelines on frequencies and how much power they can radiate.

A brief discussion followed regarding the land use and zoning, which allow this use. Attorney Gougelman said that the authority of local government with regard to placement has been preempted by Congress. Congress has decided that we will have widespread cell phone network. In some locations, they are installing lower antennas and placing them in rights-of-way on lampposts. Mr. Contreras suggested that the City consider a Code revision that would prohibit the placement of antennas/towers in rights-of-way on telephone poles, street lights, etc.

Moved by Walker/Meehan for approval of Ordinance No. 2005-103. Motion carried. Mrs. Palmer voted nay.

Recessed: 10:08 p.m.  
Reconvened: 10:13 p.m.

21. ORDINANCE NO. 2005-104 (CU-2005-06/SP-2005-12) U.S.#1 TIRE EXPANSION: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to expand an existing automotive services station on a 0.47±-acre parcel zoned C-2 (General Commercial), located on the west side of Harbor City Boulevard, south of Sarno Road. (Owner - Certified General Contractors) (Applicant - Construction Engineering Group) (Representative - Jake Wise, P.E.) (P&Z Board - 8/18/05)

The City Attorney read the ordinance by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of this request. There were no disclosures by Council. The applicant's representative, Jake Wise, was present and available for questions.

Moved by Palmer/Hand for approval of Ordinance No. 2005-104. Motion carried unanimously.

22. ORDINANCE NO. 2005-105 (AR-2005-175), ORDINANCE NO. 2005-106 (CPA-2005-14), ORDINANCE NO. 2005-107 (Z-2005-1039), AND ORDINANCE NO. 2005-108 (CU-2005-

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14) ANCHEW INVESTORS AND SUNGRACE, INC.: Ordinances providing for annexation, a Comprehensive Plan Amendment, zoning designation, and a conditional use for two properties, located near the northwest corner of the intersection of Aurora Road and Stewart Road. (Owner/Applicant – Anchew Investors) (P&Z Board – 8/18/05)

- a. Ordinance No. 2005-105/AR-2005-175: (First Reading/Public Hearing) An ordinance providing for annexation of 6.25 acres (5.05 acres plus 1.2 acres of adjacent public right-of-way).
- b. Ordinance No. 2005-106/CPA-2005-14: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial/Medium Density Residential on 5.05 acres.
- c. Ordinance No. 2005-107/Z-2005-1039: (First Reading/Public Hearing) An ordinance providing for a zoning designation of C-2 (General Commercial) on 2.41 acres and R-2 (10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre) on 2.6 acres.
- d. Ordinance No. 2005-108/CU-2005-14: (First Reading/Public Hearing) An ordinance granting a conditional use to allow an existing automotive service station on a 0.96-acre parcel.

Attorney Gougelman read each ordinance by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of this request. There were no disclosures by Council.

Mrs. Hand asked if this is going to be another used car lot along the Aurora Road area. Mrs. Dittmer said that if it is, it will meet City standards and won't look like the other lots in this area.

Mike Williams, member of Anchew Investors, reported that they don't know what they are doing yet, but he does not believe it will be a car lot. He added that they have not done a feasibility study.

That concluded comments from the public.

Moved by Palmer/Hand for approval of Ordinance No. 2005-105. Motion carried unanimously.

Moved by Contreras/Goode for approval of Ordinance No. 2005-106. Motion carried unanimously.

Moved by Hand/Meehan for approval of Ordinance No. 2005-107. Motion carried. Mr. LaRusso voted nay.

Moved by Walker/Hand for approval. Motion carried unanimously.

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23. ORDINANCE NO 2005-109: (First Reading) An ordinance amending Chapter 2 of the City Code, Administration, amending Section 2-16 as it relates to the expense allowance for Mayor and Council.

Attorney Gougelman read Ordinance No. 2005-109 by its title.

Moved by LaRusso/Contreras for adoption of Ordinance No. 2005-109.

Mrs. Hand questioned why the Mayor's reimbursement rate is higher. Mayor Goode replied that the Mayor travels more.

Pat Poole, 805 East Palmetto Avenue, spoke in opposition to the increase in reimbursement. She noted that this is on top of the recent increase in salaries. Mrs. Poole said that the City has unfunded and capital improvements needs that should be considered before an increase in the travel allowance.

The question was called. The roll call vote was:

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

Motion carried unanimously.

24. RESOLUTION NO. 1949: (Public Hearing) A resolution to adopt an annual stormwater utility budget for the fiscal year beginning October 1, 2005.

The City Attorney read the resolution by title.

Moved by Hand/Contreras for approval of Resolution No. 1949. Motion carried unanimously.

25. RESOLUTION NO. 1950: A resolution certifying the Stormwater Utility Assessment Roll.

Attorney Gougelman read Resolution No. 1950 by title.

Moved by Contreras/Goode for approval of the resolution. Motion carried unanimously.

26. COUNCIL ACTION RE: Pay adjustments for non-union employees

The recommendation is for approval of 3.0% across-the-board increases for non-union regular part-time and full-time employees effective the first payroll in October 2005, including comparable increases in the special pay positions and step increases in accordance with the Step Pay Plan, and adjust the City Manager and City Attorney salaries consistent with other non-union employees.

Moved by Palmer/LaRusso for approval of the recommendation. Motion carried unanimously.

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27. COUNCIL ACTION RE: Appointment of two regular members to the Architectural Review Board.

Moved by Palmer/Meehan to reappoint David Bogenrief and Eric Lewis. Motion carried unanimously. (Terms: 10/1/2005 – 9/30/2008)

28. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Palmer asked the City Manager if he has received more detail from the County on its offer to sell the Sarno landfill property. Mr. Schluckebier said there is no additional detail at this time. The City plans to ask the County if it has a recent appraisal on the property.

Mrs. Palmer asked for a follow up on the City's request for temporary injunction on the Florida Recyclers site related to the height of its landfill.

The City Manager reported that staff is finalizing negotiations with Waste Management for renewal of the solid waste contract. The current contract will expire September 30 and a one-month extension is being requested while the attorneys for the City and Waste Management review the contract language.

29. ADJOURNMENT

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

The meeting adjourned at 10:40 p.m.

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City Clerk – 9/22/2005

Approved by Council: September 27, 2005