

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
DECEMBER 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 6:30 p.m. by Mayor Harry C. Goode, Jr.

1. Pastor Terry L. Craig, Lifeline Christian Center, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Richard Contreras	Council Member, 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	Vice Mayor, 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

Mayor Goode presented a 20-year service pin and a retirement plaque to Johnnie Mae Scott for her dedicated public service as a member of the Melbourne Housing Authority.

Council Member Mark LaRusso received the Distinguished Service Award plaque in recognition of outstanding leadership from the Coastal Police Benevolent Association.

The Mayor presented Council Member Walker with a proclamation from the Florida League of Cities recognizing her 20 years of public service.

5. Approval of Minutes - November 22, 2005 Regular Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier commented on the following:

- Item #7 in the report indicates that the City will benefit from the Florida Department of Transportation slope restoration project on U. S. 1 between Highway 192 and Ballard Drive beginning in January. This work will be two to three times the level of assistance we would have received had our grant application been successful. Deputy City Manager Howard Ralls insisted that FDOT address the slope issue, and

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FDOT responded favorably. The City is excited about the pending work and pleased with the level of response/cooperation.

- Item #15 in the report indicates that the City Engineer will provide under separate cover a review of construction market/bidding difficulties the City is experiencing. Although the report was distributed to Council, it was not distributed with the agenda materials as intended.
- Several meetings ago Mr. Cleave Frink spoke to Council about the problem of older teenagers and/or adults using parks intended for children. The Police Chief reviewed Mr. Frink's suggestion about a Code provision that would legislate how/when parks are utilized by certain age groups. The Chief has responded with a set of procedures and directives related to this issue. At this moment staff is not convinced that legislating a solution is the best option. The procedures will be distributed to City Council for review.

Council Member Richard Contreras referenced Item #3 regarding the installation of the red light cameras at the intersection of Hibiscus and Airport Boulevards. He asked if the cameras are operational.

Police Chief Don Carey stated that the cameras have been installed; however, they are not yet operational. The City is waiting for Brighthouse Networks to extend cables to the intersection to provide high-speed connectivity. He added that he will advise the City Manager as soon as the cameras are operational.

7. Public Comments

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2005-119 SEXUAL PREDATORS: (Second Reading/Public Hearing) An ordinance relating to sexual offenders and sexual predators; creating Sections 20-90 through 20-92, City Code; providing findings and definitions; requiring registration with the Chief of Police or the Chief's designee. (First Reading - 11/22/05)

City Attorney Paul Gougelman read the ordinance by title. Mayor Goode opened the public hearing. There were no comments.

Moved by LaRusso/Contreras for approval. The roll call vote was:

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

Motion carried unanimously.

9. ORDINANCE NO. 2005-131 (A&V NO. 288): (Second Reading/Public Hearing) An ordinance vacating the southerly five feet of a 15-foot wide public utility and drainage

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easement along the north lot line except the easterly and westerly five feet of Lot 24, Block 1, Dartmouth Trail. (Robert & Shirley Fulton - 2584 Senator Way) (First Reading - 11/22/05)

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

Moved by Hand/Walker for approval of Ordinance No. 2005-131. The roll call vote was:

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

Motion carried unanimously.

10. ORDINANCE NO. 2005-132 (A&V NO. 290): (Second Reading/Public Hearing) An ordinance vacating the westerly seven feet of a 10-foot wide public utility easement. (Fredrick & Suni Clark - 3183 Winnipeg Court) (First Reading - 11/22/05)

Attorney Gougelman read Ordinance No. 2005-132 by its title. There were no disclosures from Council and no comments from the audience.

Moved by LaRusso/Contreras for approval of Ordinance No. 2005-132. The roll call vote was:

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

Motion carried unanimously.

11. ORDINANCE NO. 2005-133 (ED-2005-05) FYI CORPORATION: (Second Reading/Public Hearing) An ordinance granting an Ad Valorem Tax Exemption for a period of three years totaling an estimated \$4,564.08. (First Reading - 11/22/05)

Attorney Gougelman read the ordinance by its title. There were no public comments.

Moved by Palmer/Meehan for approval of Ordinance No. 2005-133. The roll call vote was:

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

Motion carried unanimously.

12. ORDINANCE NO. 2005-135 (AR-2005-177) AND ORDINANCE NO. 2005-136 (CPA-2005-16) PALM BAY 20, INC.: Ordinances providing for annexation and a Comprehensive Plan Amendment on a 17.39±-acre parcel, located on the north side of Palm Bay Road, between Dairy Road and Hollywood Boulevard. (Owner/Applicant – Palm Bay 20, Inc.) (Representative – Jack B. Spira) (P&Z Board – 11/03/05)

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- a. Ordinance No. 2005-135/AR-2005-177: (Second Reading/Public Hearing) An ordinance providing for annexation of a 17.39±-acre parcel. (First Reading – 11/22/05)
- b. Ordinance No. 2005-136/CPA-2005-16: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Medium Density Residential on a 17.39±-acre parcel. (First Reading - 11/22/05)

Mayor Goode referenced the letter from Attorney Jack Spira, the applicant's representative, requesting that Ordinance No. 2005-136 (Comprehensive Plan Amendment) be withdrawn. There were no objections from Council.

The City Attorney read Ordinance No. 2005-135 by title. Mayor Goode opened the public hearing. There were no comments.

Moved by Hand/Walker for approval of Ordinance No. 2005-135. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

13. COUNCIL ACTION RE: Rejection of City Hall expansion/renovation bid, Doster Construction Company, Orlando, FL - \$11,290,793.

From the agenda report: Six contractors attended a mandatory pre-bid meeting on November 3, 2005. Only one bid was submitted (Doster Construction Company) on the opening date. The City's engineering consultant for this project, BRPH, has recommended that the City reject this bid since the cost is excessive for this type of work. Staff concurs with this recommendation and will work with the consultant on alternatives and options to re-bid the project. It is anticipated that more specific plans for action to proceed as well as to overcome perceived market difficulties will be developed in the next several weeks.

City Engineer Jenni Lamb said that potential bidders expressed serious concerns about having a phased construction process while employees remain in the building. One option would be to move staff temporarily off site, which would also shorten the construction period from 24 months to 14 months. This is one of several alternatives being discussed.

Council Member Mark LaRusso asked if moving people off site during the renovation would make that much of a difference. Ms. Lamb said they believe this would reduce the bid price by half. She added that they also need to consider the cost of leasing space.

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Mr. LaRusso stated that it makes more sense to level the building and construct a three- or four-story structure with ample parking. Mayor Goode agreed that is what the City should be working towards.

Mr. Schluckebier commented that we don't have a contract with the architect for a three- or four-story rendition. The City Hall renovation project is what was bid. Staff does not believe that the \$11 million bid is reflective of reality, or the market place. The architect and our engineering staff believe we have a viable project in the \$4 to \$5 million range.

Max Snider, President, BRPH Architect Engineers and Pat Mandiola, Architect, BRPH, were present. Mr. Snider said he is filling in for Project Manager Randy Thron. He reported that they have done a lot of research in the market over the last six months. They don't believe they could provide an estimate to any of their clients based on what is happening in the bidding market. When the work started, BRPH felt comfortable with the City's budget. Prior to the bid they started to see a creep in cost; however, not to the extent reflected in the bid.

Continuing, Mr. Snider elaborated on other recent bids throughout the County and the lack of bidders. He said that his advice would be for the City to hold off and see what is happening in the bidding climate. He doesn't know how long that is going to take and he can't say where it is going. Mr. Snider noted that bidders are taking work where they can make the most money with the least liability.

Ms. Lamb said that the City could wait up to six months and still have the project done in the same timeframe if the project is not phased.

Mr. Contreras asked if space is available to accommodate the workforce from City Hall. Ms. Lamb said it is possible space is available in other City structures that would allow a department or departments to stay and function together. Also, there are several private structures available.

Mayor Goode asked Council to stay focused on this agenda item, which is the rejection of the bid.

In response to Mr. LaRusso, Ms. Lamb said construction was estimated at \$120 per square foot, and the bid came in at \$268 per square foot.

Mayor Goode asked if the bidding market is experiencing problems because of the natural disaster in Louisiana and Mississippi. Mr. Mandiola replied yes, along with the housing market. He noted that the cost of concrete and cement has almost doubled.

Moved by Contreras/Hand to reject the bid as recommended.

Mr. Contreras recommended that a discussion item return on the January 10 agenda. The City Manager said that staff will do its best to re-conceptualize the issue and return to Council for additional direction. Mr. Contreras added that if we are going to start at ground zero, he does not want staff and BRPH to waste its time.

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The question was called. The roll call vote was:

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

Motion carried unanimously.

14. COUNCIL ACTION RE: Contract award for Engineering Services during construction for Lake Washington Surface Water Treatment Plant - Phase 2 Improvements, Project No. 30102, Hazen and Sawyer, P.C., Fort Pierce, FL - \$1,538,760; and transfers of \$787,598 from Project No. 31205, RO Concentrate and \$600,000 from Project No. 33005 Lift Station at Dairy Road and Eber Road.

Council Member Loretta Hand asked for information about the cost from CH2M Hill versus the cost from Hazen and Sawyer.

Ms. Lamb reported that the cost from CH2M Hill was \$1.2 million, which did not include applications programming. Programming is included in this contract. The CH2M Hill contract covered a period of 18 months, yet the contract awarded is for 22 months. Using the same factor on previous CH2M Hill amendments to reach 22 months results in the contract with Hazen and Sawyer being almost \$300,000 less.

Mayor Goode stated that Mrs. Poole has submitted a request to speak. Although this is not a public hearing, he will allow three minutes.

Pat Poole, 805 East Palmetto Avenue, said that she is familiar with CH2M Hill since she served on Council for 18 years. She questioned the 18-month versus 22-month calculation and said that CH2M Hill should be allowed an opportunity to submit the price in writing. If the City decided to extend the time, CH2M Hill should have been given an opportunity to say what it could do. She concluded by saying that CH2M Hill is one of the best firms in the United States and they deserve a fair chance after all the work they have done for the City.

Mr. Contreras stated that he would stand 100% behind our employees before standing behind a contractor.

Mr. Schluckebier noted that Ms. Lamb's comparison put CH2M Hill and Hazen and Sawyer on an apples to apples comparison. In addition to CH2M Hill not providing a cost to cover the entire project, they didn't include a large element of the work – applications programming. Staff firmly believes that this is a reasonable price.

Council Member Cheryl Palmer asked why the project timeframe changed from 18 months to 22 months.

Ms. Lamb said that CH2M Hill put the project out to bid and, therefore, knew the timeframe was 22 months. She does not know why they bid 18 months. Ms. Lamb

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added that the Hazen and Sawyer contract includes a higher level of service with regard to inspections and meetings with staff.

Moved by Meehan/Goode to approve the contract as recommended. The roll call vote was:

Aye: Contreras, LaRusso, Meehan, Palmer and Goode

Nay: Walker and Hand

Motion carried.

15. RESOLUTION NO. 1960: A resolution authorizing the issuance of a Subordinate Electric Utility Tax Revenue Note, Series 2005 in the amount not to exceed \$6,200,000 to finance the cost of construction and equipping of various Capital Improvement Projects including but not limited to the Fire Station #78 project and the City Hall project.

From the agenda report: This is a resolution authorizing the issuance of a Subordinate Electric Utility Tax Revenue Note, Series 2005 to partially finance the construction and equipping of Fire Station 78 and the construction and renovation of City Hall. It authorizes a Note not to exceed \$6,200,000 for 20 years to be repaid with a pledge from the City's electric utility tax revenues. The par amount of the Note is estimated to be \$6,082,000 and closing is scheduled for December 16, 2005.

The City issued an RFP to competitively bid the financing at a fixed rate, term loan to partially finance the cost of Fire Station 78 and the City Hall construction and renovation. Three proposals were received and based on a review by staff and Public Financial Management, Bank of America, N.A. Orlando, FL was selected as having the most favorable proposal. The actual rate of interest will be set two days prior to closing.

Director of Finance Michele Ennis briefed Council. She reported that staff is recommending approval. The fixed rate will be set tomorrow and closing is scheduled for Friday. The rate is estimated to be slightly over four percent. A representative from the City's bond counsel and Bank of America are present.

Mr. Contreras asked what effect the City Hall bid will have on this item. Ms. Ennis replied that it is the City's expectation when the debt is issued that 85% will be spent within three years.

Mayor Goode asked if the City should consider borrowing more money since City Hall is an unknown. Mr. Schluckebier replied that staff believes the sizing of the note is adequate based on the engineer and architectural estimates for the project Council authorized.

Council Member Grace Walker asked who is representing the bank. Todd Morley with Bank of America stood from the audience.

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Mr. Contreras asked if the note can be refinanced if we need to add more.

Tom Constantine, Bryant, Miller and Olive, the City's bond counsel, stated that assuming the test for coverage ratios is met, then additional debt could be issued to cover what might be additional construction costs for a new City Hall or renovation of the existing City Hall.

Mr. Schluckebier added that the City stands well within those criteria, as it exists at this point. Mr. Constantine agreed and said that is his understanding.

Attorney Gougelman read Resolution No. 1960 by title.

Mrs. Walker asked the representative from the bank to comment on whether there would be a problem with increasing the loan amount.

Todd Morley, Senior Vice President, Bank of America, stated that he would not have a problem. He added that the City has capacity if it needs additional money.

Mr. LaRusso said that there will be approximately \$4.9 million remaining for the renovations. He is pleased that the amount could be increased further down the road.

The City Manager said that staff wanted to advance this financing to lock in the low rate. This is one of the lowest rates offered for general government financing in quite some time.

Moved by Hand/Walker for approval of Resolution No. 1960. Motion carried unanimously.

16. COUNCIL ACTION RE: Contract award for the construction of Fire Station #78, Project No. 10604, Certified General Contractors, Inc., Melbourne, FL - \$1,250,704; authorization for the City Manager to execute the documents; and appropriation of \$1,056,034 of 2005 Note Proceeds for this project budget.

City Engineer Jenni Lamb was available for questions.

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

17. COUNCIL ACTION RE: Approval of a Continuing Consultant's Contract for Water Treatment Plant Engineering Services, Hazen and Sawyer, P.C., Fort Pierce, FL for construction projects that do not exceed \$1,000,000 or studies that do not exceed \$50,000.

Ms. Lamb was present and available for questions.

Moved by Contreras/Meehan for approval as recommended. Motion carried. Mrs. Hand voted nay.

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18. COUNCIL ACTION RE: Contract award for miscellaneous waterline replacements, Project No. 30405, Young's Communication, Inc., Melbourne, FL - \$874,857.50; and an appropriation from Water & Sewer Prior Year Surplus of \$166,497 to this project budget.

Ms. Lamb was available for questions.

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

19. COUNCIL ACTION RE: Contract award for roof replacements/repairs, Alan Trepanier Construction, Melbourne, FL - \$97,000; Couch's Waterproofing, Inc., Palm Bay, FL - \$128,575; and Sun Sky Roofing, Vero Beach, FL - \$259,959.70.

Public Works/Utilities Director Robert Klapproth was present and available for questions.

Mrs. Palmer asked if we are experiencing higher than anticipated prices on this type of work – similar to the construction contracts. Mr. Klapproth replied yes, approximately 30% higher.

Mr. Klapproth confirmed for Mrs. Walker that this is the second group of buildings that were damaged. The work on the first group is substantially complete.

Moved by Palmer/Walker for approval as recommended. Motion carried unanimously.

20. COUNCIL ACTION RE: Contract award to retrofit traffic signals with Light Emitting Diodes (LEDs), Project No. 64606, FPL Services, LLC, Juno Beach, FL - \$274,536; authorization for the City Manager to execute the documents; and an appropriation from Local Option Gas Tax Fund Prior Year Surplus of \$100,000 as well as an appropriation from General Fund Prior Year Surplus of \$200,000 to establish a budget for this project.

Ms. Lamb briefed Council and noted that the LED's will use about 10% of the energy of the existing bulbs. The City expects this project to pay for itself in energy savings over a five year period.

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

21. CONSENT AGENDA:

Moved by LaRusso/Hand for approval of the consent agenda. Motion carried unanimously.

- a. Approval to incorporate the CDBG Disaster Recovery Initiative Grant award of \$447,656 into the 2005-2006 budget and to establish a related expenditure and revenue budget for the corresponding funded projects.

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- b. Supplement No. 268 to the Continuing Consultant's Contract for Engineering Services to provide for roadway and drainage improvements for Gramling Park Subdivision, Frazier Engineering, Inc., Melbourne, FL - \$43,000.
- c. Approval of a Disaster Relief Funding Agreement between the State of Florida, Department of Community Affairs and the City of Melbourne for federal and state assistance for Hurricane Wilma and authorization for the City Manager to execute the related documents.
- d. Purchase of four vehicles, Pierce Manufacturing, Inc., Appleton, WI - \$219,173.83; Altec Industries, Inc., West Palm Beach, FL - \$70,051; Duval Ford, Jacksonville, FL - \$26,742; and Mauldin International Trucks, Inc., Orlando, FL - \$97,402.59.
- e. Purchase of traffic controller upgrades at 14 intersections, Naztec, Inc., Sugar Land, TX - \$106,840.
- f. Emergency repair of 14 traffic signals, Project No. 64799, Traffic Control Devices, Inc., Altamonte Springs, FL - \$36,684.75.
- g. Purchase of annual Novell NetWare and GroupWise support service, Viable Solutions, Inc., Orlando, FL - \$20,355.
- h. A request to revise the 2006 Legislative Priorities to add an item about the use of red light cameras for traffic enforcement.
- i. Resolution No. 1961: A resolution authorizing the City Manager to execute the fourth addendum to a lease agreement with Robert Scott Harrell for property at 912 East Palmetto Avenue.

22. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

23. PARKING LOT APPROVAL (PR-2005-01) HCT RIVERSIDE: (Public Hearing) A request for approval of a parking lot on a 0.6±-acre parcel zoned R-2 (One-, Two-, and Multiple-Family Residential), located on the west side of Circle Avenue and south of Elton Street. (Owner - HCT Riverside, Inc.) (Applicant - Richard E. Torpy) (Representative - MAI Architecture Engineering, Inc.) (P&Z Board - 11/17/05)

Planning & Economic Development Director Cindy Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval subject to the following conditions:

- a. The parking lot shall be constructed substantially consistent with the one-page plan prepared by MAI Architecture Engineering Construction of Melbourne, Florida with Project Number 05-081, with a signed and sealed date of 11/01/05.

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- b. All 16 oak trees, as shown on the site plan, shall be preserved on site unless determined non-viable by City staff during construction plan review.

There were no disclosures by Council. Attorney Philip Zies, representing the applicant, was present and available for questions.

Moved by Walker/Meehan for approval, subject to the findings and conditions. Motion carried unanimously.

24. FINAL PLAT APPROVAL (SD-2004-09A) PINEDA RIDGE SUBDIVISION, PHASE I: (Public Hearing) A request for final plat approval for Phase 1 of the Pineda Ridge Subdivision on a 20.63±-acre portion of a 70-acre parcel zone C-P (Commercial Parkway), located on the west side of Wickham Road, south of the Pineda Causeway, across from Mariah Drive. (Owner - Pineda Crossing Corporation) (Applicant - Home Depot USA, Inc.) (Representative - Pulice Land Surveying) (P&Z Board - 11/17/05)

Ms. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the two-page final plat prepared by Pulice Land Surveyors, Inc. of Sunrise, Florida, with a stamped date of November 4, 2005, subject to the following conditions:

- a. 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.
- b. The applicant shall provide the additional required documents, pursuant to Appendix D, Chapter 8, Section 8.5 (c) (4) prior to plat recordation.
- c. The applicant shall provide the additional required information and certificates as required by F.S. 177.071 and 177.081 prior to recordation of the final plat.
- d. 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. Jane Storms, Pulice Land Surveyors, Sunrise Florida, was present and available for questions.

Moved by Contreras/Palmer for approval subject to the findings and conditions. Motion carried unanimously.

25. SITE PLAN APPROVAL (SP-2005-25) VENETIAN VILLAGE, PHASE II: (Public Hearing) A request for site plan approval to develop a townhome-style condominium project on a 9.8±-acre parcel zoned R-2 (10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre), located on the west side of Dairy Road, north of Palm Bay Road, and west of Princeton Apartments. (Owner - Group Four Investments, LLC) (Applicant - Ken Walsh) (Representative - Jake T. Wise) (P&Z Board - 11/17/05)

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Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to approve the single-sheet plan prepared by Construction Engineering Group, with Project Number 040258, and a signed and sealed date of November 2, 2005, subject to the following conditions:

- a. Any change to the site plan will require reevaluation by the Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan as outlined in Appendix B, Article IX, Section 6 (E), will require review and approval by either City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.

- b. Prior to construction plan approval, the applicant shall obtain all applicable permits.
- c. The site must be substantially consistent with the rendering submitted with the project.
- d. The applicant shall include a six-foot opaque fence, including vegetation, along the western boundary of the property. The specific vegetation to be provided shall be approved during the construction plan review process.
- e. The applicant shall connect the drive and remove the temporary cul-de-sac to the north within 60 days of completion of roadway improvements to Snicole Avenue. This connection shall include sidewalk improvements.
- f. The applicant shall work with staff to provide traffic calming measures along the interior roadway of the proposed development.
- g. The applicant shall provide a tapered/deceleration lane east bound on Snicole Avenue once constructed, if deemed necessary by the Engineering Department during construction plan review.

There were no disclosures by Council.

Moved by Hand/Walker for approval subject to the findings and conditions. Motion carried.
Mr. LaRusso voted nay.

26. ORDINANCE NO. 2005-137 (CU-2005-20/SP-2005-30) 4855 WICKHAM CENTER: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to develop a four-story mini-storage building and three single-story office buildings on a 6.05±-acre parcel zoned C-C-2 (General Commercial), located east of Wickham Road, south of Mariah Drive. (Owner/Applicant - Boozer Properties, LLC) (Representative - Rochelle Lawandales) (P&Z Board - 11/17/05)

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The City Attorney read the ordinance by title. Mrs. Dittmer briefed Council. A conditional use and site plan were approved for this project in 2003. At that time the City Council stipulated that no construction traffic would utilize Mariah Drive. In the meantime, Brevard County determined that a curb cut/driveway on Wickham Road would not be permitted due to the proximity of a southern drive and the intersection with Mariah Drive. The change to the site plan is considered substantial and requires approval by City Council.

The Planning and Zoning Board voted unanimously to recommend approval subject to an additional condition requiring that the applicant work with staff to create a temporary parking area for construction equipment and workers to prevent parking of construction vehicles and workers on Mariah Drive.

Mr. LaRusso asked if this property had been clear-cut without a required permit. Mrs. Dittmer said there were issues on the site prior to the previous site plan being approved. Those issues have been cleared through state and federal agencies. And, she believes that the applicant purchased acreage elsewhere for scrub habitat.

Rochelle Lawandales, representing the applicant, agreed with all the conditions, including the new condition imposed during the Planning and Zoning Board meeting. Regarding Council Member LaRusso's inquiry, she said she is not sure what the mitigation was. She added that no fines were imposed and the property owner has all the required permits.

Continuing, Ms. Lawandales said the previous condition that there would be no construction traffic on Mariah Drive is why this item is back before Council. Since the applicant will not be able to have access off Wickham Road, they are requesting two driveways on Mariah Drive. The proposed development is the same as the one previously approved.

Mrs. Palmer asked how close the western driveway is to the landscaped median on Mariah Drive. Ms. Lawandales said approximately 10 – 15'.

Mrs. Walker asked where the construction vehicles will be parked when not in use. Ms. Lawandales said the project will be phased over a couple of years; there will be opportunities to create staging areas on site for construction vehicles.

In response to Mrs. Palmer, Ms. Lawandales said it is her understanding that the access points and basic infrastructure will be constructed immediately.

Mrs. Palmer asked if the owner would be willing to finance the repairs caused by construction damage to any of the landscaped medians put in by the homeowners' association. Ms. Lawandales replied yes and said Mr. Boozer has gone on record that he will leave the area in a better condition than he found it. Mrs. Palmer said she would like to see this added as a condition.

Council Member Kathy Meehan said she would like to be assured that trucks are parked closer to Wickham Road so they don't interfere with the residential area. Ms. Lawandales said that where they are working on the site will dictate where the trucks go to unload. Most

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trucks will arrive, drop their load and leave. The operation will be during the day, so she doesn't anticipate any night activities that would disturb the residential area.

Mr. Contreras asked about the hours of operation for the three retail buildings. Ms. Lawandales said that is unknown at this time. Mr. Contreras said he would like to see that deliveries not occur between 10:00 p.m. and 6:00 a.m. Ms. Lawandales said she would not have a problem with this being added as a stipulation.

Douglas Dixon, 2779 Caitlin Court, President of the Live Oak Homeowners' Association, said that during the Planning and Zoning Board meeting on this item, the applicant insisted that there was no mitigation. He said that it seems like their answer was false if they had to purchase land.

Continuing, he said that over the last 12 years the residents have put \$100,000 into the front entrance. He's not sure whether it is County or City easement; however, they have 20 – 25 feet of beautifully maintained grass, oak trees, etc. Mr. Dixon said he is concerned that they plan to construct a four-story building that is huge. He's not sure if it will have a shadow effect. Additionally, he noted that there is no other development that has five driveways on the main, single, two-lane road entering a subdivision. The residents believe this is unreasonable.

Mr. Dixon said that as representative of the North Melbourne Homeowners' Alliance, this development seems a little nuts. He pointed out that the County had the wisdom of putting a moratorium on Wickham Road, but the developers are going around this by using existing driveways.

That concluded comments from the public.

Mr. Contreras disclosed that he spoke with Rochelle Lawandales on December 12 about the condition prohibiting the parking of construction vehicles on Mariah Drive, restricted deliveries and the rendition.

Attorney Gougelman said that Council has discussed adding two additional conditions. He recommended the following language:

- g. During construction any damage to paving or landscaping in the right-of-way shall be immediately repaired and/or replaced by and at the expense of the owner/developer of the project.
- h. Deliveries to the project site of merchandise, materials, or supplies shall not be permitted between the hours of 10:00 p.m. and 6:00 a.m. daily.

Moved by Palmer/Goode for approval of Ordinance No. 2005-137, subject to conditions "a" through "h." Motion carried. Council Member LaRusso voted nay.

Recessed: 8:00 p.m.
Reconvened: 8:10 p.m.

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27. ORDINANCE NO. 2005-138 (CU-2005-11/SP-2005-20) HARBOR CITY MIXED USE (FKA CAUSEWAY CENTER, VUES): (First Reading/Public Hearing) An ordinance repealing Ordinance No. 2002-63 (CU-2002-15) and Ordinance No. 2003-43; and granting a conditional use with site plan approval to allow a building height of 159'4" for a mixed use retail and multiple family residential condominium project on three parcels comprising approximately 2.31± acres zoned C-3 (Central Business District), located on the south side of Strawbridge Avenue, on the north side of New Haven Avenue and east of U.S. Highway 1. (Owner - Hynes Properties, LLC) (Applicant/Representative - David T. Menzel, P.E., MAI Engineering, Inc.) (P&Z Board - 12/01/05)

Attorney Gougelman read Ordinance No. 2005-138 by its title. Mrs. Dittmer briefed Council.

A previous conditional use and site plan were approved for a 93-foot building with 50 condominium units and 89,000 square feet of commercial area on the same property in 2003. Approval of the new request would provide for repeal of the ordinance related to the 2003 building and site plan.

The applicant is requesting an additional 79 feet, four inches of height within the C-3 zoning district to construct two buildings containing 248 condominium units and 12,650 square feet of commercial area. The proposed density is 107 units per acre. The buildings contain five or six levels of garage parking and 12 levels of residential units. A total of 590 parking spaces is proposed. The site will contain walkways, including the construction of steps in proximity to the original location of the Trysting Steps, and semi-public open space. Access to the site will be from U.S. 192 and East New Haven Avenue.

The applicant will also provide for some public benefit through the payment of the public parking surcharge fee, totaling \$700,784, the provision of some semi-public space through the walkways included on the site, the provision of all streetscaping (lighting, pavers, benches, etc.) elements surrounding the perimeter of the property and the additional landscaping within the FDOT right-of-way. In addition, a total of 12 conditions of approval is recommended for the project, which will require other various improvements and agreements.

One of the main conditions is the revision to the "developers agreement/license and easement agreement", which was previously approved with the project by City Council. Revisions to the agreement are being refined with the applicant at this time. Consideration of the agreement by City Council will occur after second reading of the ordinance on January 10, 2006.

At the December 1 Planning and Zoning Board meeting, a representative for One Harbor Place voiced concerns about the project and several Downtown business/property owners spoke in favor of the project due to the benefits that it would bring to Downtown through additional residents in the area.

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The Planning and Zoning Board voted five to two to recommend approval of this request. The Board added condition I., related to the access from U.S. 192 if property to the west is acquired.

Mrs. Dittmer confirmed for Mr. LaRusso that the applicant closed on the “Lewis” property several weeks ago. Mayor Goode added that the site plan shows buildings and driveways on top of that property.

In response to Mr. LaRusso, Mrs. Dittmer said that density was calculated based on the number of units, not the square footage.

Mayor Goode said that he has heard rumors about the future relationship with the owner of the Strawberry Mansion. He noted that he spoke with a representative from the Strawberry Mansion yesterday and learned that there is no dialogue. Additionally, the Mayor commented that he sees no correlation between this development/height and the Marina Towers development on U. S. 1.

Continuing, the Mayor said he has heard that the development or portion of the development will be sold to the person who will develop and build the project. If that is the case, he said he would like for the City to receive half of the parking fee and half of the water/sewer fees in advance of any building permits being issued.

Mayor Goode asked if there were any further disclosures.

Mrs. Meehan said that on December 12 Dan LoPresti from the Christmas Cottage in Downtown Melbourne contacted her and said he supports this development. She met with Bob Hynes at his business to discuss the project. Mr. Hynes noted that this site plan provides more green space and a reduction in traffic.

Mrs. Palmer said she spoke with Bob Hynes by phone and he explained the particulars of the project, why he believes this plan is an improvement, and the reduction in traffic with this plan. She added that she told Mr. Hynes she would give this item a fair hearing.

Mrs. Hand said she received a message from Mr. Hynes; however, she did not return the call because the item had not been heard by the Planning & Zoning Board at that time.

Mr. LaRusso said that on November 30 he received a voice mail from Bob Hynes; however, he did not return the call.

Mr. Contreras said that he spoke with Mr. Hynes on December 9 and Mr. Hynes asked if he had any questions. Additionally, he spoke with Hamilton Boone about the public parking surcharge fee. Later in the meeting, Mr. Contreras said that the company that conducted the poll on behalf of the applicant for this project left him a message; however, he did not return the call.

Mrs. Walker said she received a voice message from Mr. Hynes. She returned the call but she declined meeting with him.

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Mayor Goode opened the public hearing.

Dave Menzel, MAI Engineering, 2200 Front Street, representing the applicant, stated that this site plan is truly better than the prior plan. He submitted a booklet entitled “Vues Condominiums at Harbor City Center” and stated that it contains additional information.

Continuing, Mr. Menzel commented on the following: they met with staff regarding compatibility issues and reached agreement; they have met all of the City’s requirements; the biggest difference with this plan is the creation of a large separation between the two buildings; they relocated the trysting walkway to its original location; they have provided more of an open space around the building; they increased the amount of retail at the request of staff; this project provides for 70% less traffic than the previously approved plan; they have eliminated a large commercial building; and a traffic study has been provided to staff.

Mr. Menzel stated that because of the amount of water that flows down New Haven Avenue, they were asked by staff to store all water/drainage on site. The plan provides that no water will leave this site. It will go east to a DOT inlet box and then to the pond on the south side of New Haven Avenue by the river.

Mr. Menzel added that the FAA study on height reveals that this project is below the maximum height allowed. Additionally, they have included specific types of walkways and lighting in the plan as requested by staff.

Mr. Menzel referenced a recent redevelopment study for Downtown Melbourne, which shows that the population of Melbourne decreased between 1990 and 2005. Following a brief discussion, Mr. Menzel clarified that the study shows the population of Downtown Melbourne decreased during this period. He added that the residential component of redevelopment is important. And, this project will bring a residential component to the Downtown area.

Mr. Menzel reported that the parking impact fee for this project is estimated at \$700,000. Additionally, the project will result in a significant property tax increase without a lot of effect on the City’s infrastructure. He noted that a number of merchants and people in the Downtown area favor the project.

Mr. Menzel concluded by saying they have agreed to the decel lane condition. He said that unfortunately the alleyway still exists and DOT is not going to permit an entrance at any place other than the alley.

In response to the Mayor, Mr. Menzel assured that Waste Management trucks will be able to access the dumpster on the property. He noted that the easement will stay open; that is why the alleyway will remain intact.

Mayor Goode asked if they feel their stormwater system will adequately take care of on site retention. Mr. Menzel replied that they will be required to construct infrastructure

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immediately, which will include trench drains, etc. He elaborated on the system planned and stated that none of the water from this site will enter the street.

Mayor Goode repeated for Mr. Menzel that if this project is sold after the site plan is approved, the City should receive half of the parking fee and water/sewer fees prior to issuance of building permits. He noted that the City has been in the process with this project for about four years and is reserving thousands of gallons of water. That is his rationale for collecting half at the time building permits are pulled.

With regard to ingress/egress, the Mayor recommended that the site have a right in/right out traffic pattern. This would alleviate traffic backups or possible accidents at the site.

Mr. Menzel said right in/right out is a good idea and Mr. Hynes has no problem with this. He explained that New Haven Avenue from U. S. 1 to Strawbridge Avenue is owned by DOT. If the City took over this portion from DOT, it could be improved according to the City's wishes. They would be willing to stipulate, but they do need DOT's approval.

Mayor Goode asked why DOT wouldn't approve a right in/right out. Mr. Menzel said that DOT will require access at the alleyway; there is a double entrance issue.

In response to Mrs. Walker, Mr. Menzel showed the location of the walkway on the site and said that it will go from New Haven Avenue to Strawbridge Avenue. Additionally, he elaborated on the stormwater retention. Water will be stored on site, staged and then discharged to the river. Storage will occur beneath the buildings. He added that under building storage has been successful on several of his other developments.

Mrs. Palmer said she clearly remembers when the other plan was being discussed that Mr. Menzel talked about the fact that there was a flooding problem at the intersection with Front Street. She said at the time, Mr. Menzel said that this project would contain its own water and would correct the drainage problem at the intersection. She asked Mr. Menzel to clarify what he is saying now about the drainage.

Mr. Menzel said that none of the water from this site will enter the roadway. He elaborated on the drainage system. All of the water that flows from this site onto New Haven Avenue will be removed. He added that he wouldn't have said that this would take care of all the problems; however, it will improve the situation.

Mrs. Hand said that she originally approved this development because she was excited about the back center. Now that the commercial element has been removed, she asked if there are any plans to place a back center in another location.

Mr. Menzel replied that property on the south side of Crane Creek has been identified and they have submitted a plan for that site. He assured Mrs. Hand that a plan for the back center will be forthcoming.

Mrs. Hand commented that if the Strawberry Mansion property were made part of this development site, she would hate to see the structure torn down. Mayor Goode said that

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according to Bob Brown, there is no dialogue at this time with Dr. Hynes.

In response to Mrs. Meehan, Mr. Menzel said a semi-truck will not be able to enter the site; however, a garbage truck will be able to enter and turn around.

Mrs. Meehan referenced condition “h” and asked if a traffic signal will be definite. Mr. Menzel said he doubts this development will trip the need. He added that the only way to get a light is for the City to take over this portion of the roadway. Mr. Menzel noted that a right in/right out may preclude the need for a light.

Mr. Schluckebier clarified that the City operates under the same warrants as DOT. The City taking over that section of the roadway would not hasten or slow the need or warrants for a signal at that location.

Mr. LaRusso commented that he was not on Council when the previous plan was approved; however, he would not have supported the project. He discussed the daily traffic backup in this area and said that right in/right out would be awesome. Mr. LaRusso said his concern relates to height and density. He likes that this plan is open and provides for green space; however, density at 107 units per acre is excessive for Melbourne.

Mr. Menzel said that discussions with staff led to the 159' 4" height of this development. He added that this is less volume than previously approved. They have made concessions on size, volume and density. Additionally, this building is lower than Trinity Towers.

Mr. LaRusso stated that he is listening to the residents and the business community in Melbourne. Although this is a viable project, the density is bothering him. He absolutely wants the Downtown area to prosper and thrive; however, this project along with the others behind it will increase the resident population by as much as 40%.

Mr. Contreras asked staff to comment on the pros and cons of the City assuming responsibility for this portion of New Haven Avenue.

Deputy City Manager Howard Ralls said that DOT would probably be willing to transfer jurisdiction to the City. The pros would be that the City would have greater control over what is put in the right-of-way, as long as it meets sound engineering standards. DOT tends to be more bureaucratic. The downside would be the maintenance responsibility. A brief discussion followed regarding maintenance.

Mayor Goode referenced the following correspondence received in support of this item: December 12 from Tom Nelson, President, Melbourne Harbor Marine, 2210 South Front Street; December 12 from Charles R. Stack, High Stack Attorneys at Law, 525 Strawbridge Avenue; and December 13 from Shannon Meyer, President/CEO, Melbourne Palm Bay Area Chamber of Commerce, 1005 East Strawbridge Avenue. Correspondence in opposition dated December 13 was received from Cammie Donaldson, 2112 Helen Street.

Pat Poole, 805 East Palmetto Avenue, discussed the historical significance of this property and noted that the City began in this area along Front Street. She said that this

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development has taken the trysting steps along with the trees. Mrs. Poole reported that Council is not required to approve the conditional use; therefore, she recommended that the request be denied.

Mark Blair, 1350 Ambra Drive, stated that he is a small business owner in the Downtown area. He noted that the population of Downtown Melbourne has decreased and he believes that 248 luxury condominiums will increase opportunities for small businesses Downtown.

Laird Gann, Melbourne Main Street, spoke in support of the request and noted that Downtown Melbourne needs this project. He added that this development will provide a boost to the revitalization effort in Downtown Melbourne.

Mrs. Walker asked Mr. Gann what type of feedback he is hearing from the Downtown businesses. Mr. Gann said that they believe new residents Downtown will bring new retail to the Downtown area.

That concluded comments from the public. Mayor Goode closed the public hearing.

Mr. Contreras asked for clarification about the “semi public” space on the site. Mr. Menzel explained that the area between the two buildings will be a park like setting. It will be open to the public during the day. The area will be restricted or controlled during the evening.

Mr. Menzel explained that if they went with a lesser grade unit, they would be able to put this many units within the 80’ height allowed by Code. He said that they went with the height and density to create a more opulent development. With regard to drainage, he said he apologizes if he previously made a wrong statement; however, DOT does control what happens in this area. He added that they will do whatever they can to alleviate the drainage problems. Mrs. Palmer offered her apologies if she is wrong about what was previously said.

Continuing, Mr. Menzel noted that Dr. Hynes is looking at another site for the back center; the back center will be located in Downtown Melbourne. For information, he reported that they have submitted four contracts and held approximately 10 meetings with Ted (Moorehead) who has been negotiating on behalf of Bob Brown/Strawberry Mansion.

Mr. Menzel stated that the comments with regard to the parking and water/sewer fees are totally acceptable.

Mayor Goode asked the selling price of the condominiums. Mr. Menzel said they will start at \$600,000 and go up to \$2 million, depending on the size.

Mr. Menzel confirmed for Mayor Goode that they will go right in/right out if they receive approval from DOT.

Mr. Schluckebier referenced the timing of the fees. Mr. Menzel said they would pay half up front when the building plans have been approved and the balance as the units close.

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A brief discussion followed regarding the “trench drains” that will be located on the site.

Mr. Contreras asked how the public access will be secured at dusk. Mr. Menzel said that they will have security; however, they are not sure whether the area will be closed off.

Mr. Contreras said that this is the fourth version. He asked if this project will be built. Mr. Menzel replied that he strongly believes this project will move forward.

From the audience, Dr. Hynes agreed with the timing of the fees that has been discussed and a new condition regarding right in/right out.

Attorney Gougelman read the following new condition “m:”

- m. The owner/developer shall diligently seek approval from the Florida Department of Transportation (FDOT) that all motor vehicular traffic flow on Strawbridge Avenue and New Haven Avenue shall be right in and right out to and from the project property. All ingress to the project property from either roadway shall be by a right turn into the property. All egress from the property shall be by right turn onto either Strawbridge Avenue or New Haven Avenue. If FDOT approves this plan, no left turn into or out of the property shall be permitted.

The City Manager added that the timing of the fees will be part of a separate agreement that will return to Council on the next agenda.

Moved by Meehan/Contreras for approval of Ordinance No. 2005-138 subject to conditions “a” through “m.”

Mrs. Palmer said that she is hearing that this project has been or will be sold. She asked how closely the new owner will be required to stay with the site plan. Attorney Gougelman said that the conditions are a part of the ordinance, along with the site plan and rendering. Additionally, the restated license and easement agreement will run with the land. He noted that the City does not look at who owns the land. The successor will need to comply with all the approvals.

Attorney Gougelman confirmed for Mrs. Palmer that the semi-public area or walkway that weaves through the middle of the property is discussed in the easement and license agreement. It is an open walkway and the City will retain an easement. The City gained the easement by agreeing to waive any claims to public rights over the trysting steps. Any closure of this area would require approval by the City Council.

Mr. Schluckebier added that condition “a” provides for a threshold of change that would require City approval/review.

Mrs. Palmer said that she supported the previous plan because she thought it would revitalize the Downtown area and help small businesses prosper. The plan called for a medical center, small restaurant and “X” number of condominiums. She said she felt this plan had the interest of the City at heart. Continuing, she stated that when she opened the

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newspaper and saw the plan for 200' buildings, her heart sank. At this height, she does not feel the plan is in the best interest of the community.

Mrs. Palmer stated that she is envisioning a wall of condominiums. People who live in the City do not want this. She added that she is surprised that Main Street feels the height is congruous with what people envision for the Downtown area.

Mrs. Walker stated that she also has a problem with the height. She asked where the children who live in the condominiums will attend school.

Mrs. Hand commented that she was excited with the previous plan because of the back center. However, the plan kept changing and the height increased. She said that she has a problem with this plan and she is concerned about the future of the Strawberry Mansion building.

Mrs. Meehan said she will support this request in light of the report that indicates the population of Downtown Melbourne has been decreasing. Also, she noted that this plan provides for more green space, more sidewalks, more landscaping, and a breezeway between the two buildings. This project will provide for a reduction in traffic over the previous plan. Mrs. Meehan stated that she has been a supporter of redevelopment since its inception and this project meets the goals of the redevelopment effort.

Mr. Contreras pointed out that this project has been supported by the Chamber of Commerce, Main Street, and a business person – all located in the Downtown area. The spinal office will locate in another area Downtown, which provides for a better fit on this site. Traffic was a big concern and now that has been significantly reduced. Mr. Contreras referenced the survey material supplied by the applicant, which indicates that people support less traffic at the offset of more height. Downtown Melbourne has been moving along; however, this development will act as a catalyst and will hopefully spur economic development Downtown.

The question was called. The roll call vote was:

Aye: Contreras, Meehan and Goode

Nay: LaRusso, Walker, Palmer and Hand

Motion failed.

Attorney Gougelman asked Council to make a motion to deny the ordinance if that is Council's intent.

Moved by LaRusso/Palmer for denial of Ordinance No. 2005-138. The roll call vote was:

Aye: LaRusso, Walker, Palmer and Hand

Nay: Contreras, Meehan and Goode

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Motion carried.

28. COUNCIL ACTION RE: Approval of updated Personnel Policies and Procedures.

Mrs. Hand asked if this item could be postponed until the next meeting and the City Manager confirmed that there is no rush.

Moved by Goode/Hand to postpone this item until the January 10, 2006 meeting. Motion carried unanimously.

29. COUNCIL ACTION RE: Selection of a federal lobbyist firm.

From the agenda report: Staff initially researched public lobbyist registration records to identify firms that have municipal clients in Florida and that also have airport clients. There were only a few firms that met these key criteria. Those firms were contacted. There were also a few firms that contacted city staff. Airport Director Richard Ennis and Deputy City Manager Howard Ralls spoke to representatives from these firms.

All of the firms provided background information. Based on the initial criteria, discussion of their experience and approach, and the specific successes of each firm, two stand out. Those firms are Alcalde & Fay and Holland & Knight. Both are large, established firms. Alcalde & Fay has the greater list of municipal clients, clients in Florida, and airport clients. At \$7,000 per month for both the City and Airport, Alcalde & Fay's fee proposal is the most economic of all that were submitted.

With Council's concurrence on the selection of Alcalde & Fay, the City Manager will finalize a fee arrangement with that firm contingent upon similar approval action by the Airport Authority. The agreement will be brought to Council at its next meeting for approval. It is important to initiate this effort as soon as possible so that the Mayor, City Manager, and Airport representatives can go to Washington in early February with a plan.

Moved by Goode/Hand for approval of Alcalde & Fay as recommended. Motion carried unanimously.

30. COUNCIL ACTION RE: Appointment of one alternate member to the Building Board of Adjustment and Appeals.

Moved by Walker/Palmer to reappoint Leon Leash. Motion carried unanimously. (12/14/2005-12/13/2007)

31. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Eddie Taylor, 1500 Woodlake Drive, Palm Bay, reported that he attended a Community Development Block Grant meeting at Carver Community Center on November 8. He said that he was surprised to find that Carver has no restroom facilities. The nearest facilities

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are located in a portable toilet or at a dugout on the baseball field. He asked why a public meeting was held at a location without proper facilities.

Following a brief discussion, the City Manager said he would return with a status report at the January 10, 2006 meeting.

Pat Poole, 805 East Palmetto Avenue, commended Council for denying Ordinance No. 2005-138 (Hynes property).

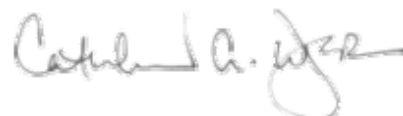
The Mayor confirmed for Ken Ward, Towne Realty, that Ordinance No. 2005-138 was denied and will not return on a future agenda.

Council Member Contreras said he thought the IAFF negotiations would be complete by October 1. Deputy City Manager Amy Elliott said that when Council met with staff about this issue in November, staff identified the need for more negotiations. Negotiations will resume at the end of this week, which is the first date IAFF representatives were available.

32. ADJOURNMENT

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

The meeting adjourned at 10:13 p.m.



City Clerk – 1/5/2006

Approved by Council: January 10, 2006