

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JUNE 27, 2006



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. Reverend Marlow Iverson, Holy Trinity Church, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Loretta Isenberg-Hand	Vice Mayor, District 6
	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
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

None.

5. Approval of Minutes – June 13, 2006 Regular Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier asked Deputy Police Chief Steve Mimbs to stand and be recognized for recently graduating from the 225<sup>th</sup> session of the FBI National Academy. The City Manager stated that this was no small undertaking and the City is proud of Chief Mimbs' achievement.

7. Public Comments

None.

UNFINISHED BUSINESS

8. ORDINANCE NO 2006-44 (AR-2006-197) ROBERT L. BURNS, JR.: (Second Reading/Public Hearing) An ordinance providing for annexation of 61.64 acres of property, located adjacent to Jones Road, north of Evinrude Road, west of I-95 and north of Eau Gallie Boulevard. (Owner/Applicant - Robert L. Burns) (First Reading - 5/23/06)

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City Attorney Paul Gougelman read Ordinance No. 2006-44 by title.

Council Member Cheryl Palmer referenced the information in the agenda package, which indicates that an agreement has been reached for the residents to purchase waterway access. She asked if that property will also be annexed.

Planning and Economic Development Director Cindy Dittmer said that the waterway access is part of this annexation. Attorney Gougelman added that the City has not seen the purchase and sale agreement.

Mayor Goode opened the public hearing.

Robert Burns, applicant, reported that the property is in the process of being surveyed. He noted that the sale won't happen over night; it is a matter of getting the documents in order.

Mrs. Palmer asked if there is an agreed upon purchase price and Mr. Burns replied, "pretty much."

Mrs. Palmer asked if the access will be open to the public. Mr. Burns said that if this is truly a navigable waterway, it is for public use – whether located in the City or the County. He added that this sale will give the surrounding residents peace of mind.

Mayor Goode closed the public hearing.

Moved by Hand/Contreras for approval of Ordinance No. 2006-44. The roll call vote was:

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

Motion carried unanimously.

9. ORDINANCE NO. 2006-46 (A&V NO. 291): (Second Reading/Public Hearing) An ordinance vacating a three-foot wide utility easement adjacent to the south lot line of 843 Adger Smith Lane. (Owners - Brian & Gina Turner) (First Reading - 6/13/06)

The City Attorney read the ordinance by title. There were no disclosures by Council. The public hearing was opened and closed with no comments.

Moved by Walker/Meehan for approval of Ordinance No. 2006-46. The roll call vote was:

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

Motion carried unanimously.

10. ORDINANCE NO. 2006-47 (A&V NO. 292): (Second Reading/Public Hearing) An ordinance vacating the south 2.5 feet except the west 7.5 feet of a 10-foot wide public utility

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and drainage easement adjacent to the north (rear) lot line of 284 Provincial Drive. (Owners - Steven & Marianne Ziembra) (First Reading - 6/13/06)

Attorney Gougelman read Ordinance No. 2006-47 by title. There were no disclosures by Council and no one spoke during the public hearing.

Moved by Meehan/Palmer for approval of Ordinance No. 2006-47. The roll call vote was:

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

Motion carried unanimously.

11. ORDINANCE NO. 2006-48 (CU-2006-06) STACK CROSSING: (Second Reading/Public Hearing) An ordinance granting a conditional use to construct a mini-storage facility on a 5.25±-acre portion of an 8.34±-acre parcel zoned C-1 (Neighborhood Commercial), located on the northeast corner of Stack Boulevard and Palm Bay Road. (Owner/Applicant - Palm Bay Venture I, LLC) (Representatives - Philip Nohrr & Richard Kern, RK Engineering, Inc.) (First Reading - 6/13/06)

Attorney Gougelman read the ordinance by title. There were no disclosures by Council. The applicant's representative, Cliff Repperger, was present and available for questions. The public hearing was opened and closed with no comments.

Moved by LaRusso/Walker for approval of Ordinance No. 2006-48. The roll call vote was:

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

Motion carried unanimously.

12. ORDINANCE NO. 2006-49 (Z-2005-1036) FOREST LAKE TOWNHOMES: (Second Reading/Public Hearing) An ordinance designating PUD (8.1) (Planned Unit Development with a cap of 8.1 units per acre) zoning on a 43-acre parcel, located on the north side of Snicole Avenue (formerly known as Madison Avenue), west of Dairy Road, south of Eber Boulevard, and north of Palm Bay Road. (Owner/Applicant - Developers Group of West Melbourne) (Representative - Jake Wise, Construction Engineering Group) (First Reading - 6/13/06)

The City Attorney read Ordinance No. 2006-49 by title. There were no disclosures by Council and no comments during the public hearing.

Moved by Hand/Meehan for approval of Ordinance No. 2006-49. The roll call vote was:

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

Motion carried unanimously.

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13. ORDINANCE NO. 2006-50 (CPA-2006-08) LINCOLN AVENUE, LOTS 7, 10, AND 11, BLOCK 29, CAMPS PLAT OF MELBOURNE: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Commercial to mixed-use Commercial/Medium Density Residential on three parcels totaling 0.61± acres, located on the north side of Lincoln Avenue, east of Waverly Place and West of Tangerine Street. (Applicant - City of Melbourne) (First Reading - 6/13/06)

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

Moved by Contreras/Walker for approval of Ordinance No. 2006-50. The roll call vote was:

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

Motion carried unanimously.

14. ORDINANCE NO. 2006-51 (CPA-2005-18) AND ORDINANCE NO. 2006-52 (Z-2005-1045) STRONG INVESTMENTS: Ordinances providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial and a C-1 (Neighborhood Commercial) zoning designation on a 1.43-acre parcel, located on the east side of Wickham Road, north of Post Road, between Forest Run Drive and Pebble Creek Street. (Owner/Applicant – Strong Investments, L.C.) (Representative – David Armstrong)

a. Ordinance No. 2006-51/CPA-2005-18: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial on a 1.43-acre parcel. (First Reading – 6/13/06)

b. Ordinance No. 2006-52/Z-2005-1045: (Second Reading/Public Hearing) An ordinance providing for a C-1 (Neighborhood Commercial) zoning designation on a 1.43-acre parcel. (First Reading - 6/13/06)

Attorney Gougelman read both ordinances by title. There were no disclosures by Council and no comments during the public hearing.

Moved by Palmer/LaRusso for approval of Ordinance No. 2006-51. The roll call vote was:

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

Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2006-52. The roll call vote was:

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

Motion carried unanimously.

15. ORDINANCE NO. 2006-53 (CPA-2005-20) AND ORDINANCE NO. 2006-54 (Z-2005-1047) AURORA ASSOCIATES, LLC: Ordinances providing for a Comprehensive Plan

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Amendment designating a Future Land Use of Medium Density Residential and an R-2 (One-, Two-, and Multiple-Family Resident) zoning designation on a 2.75-acre parcel with an existing mobile home park, located on the north side of Aurora Road, west of Lansing Street and east of Wickham Road. (Owner/Applicant – Aurora Associates) (Representative – William Binnicker)

- a. Ordinance No. 2006-53/CPA-2005-20: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Medium Density Residential on a 2.75-acre parcel. (First Reading – 6/13/06)
- b. Ordinance No. 2006-54/Z-2005-1047: (Second Reading/Public Hearing) An ordinance providing for an R-2 (One-, Two-, and Multiple-Family Residential) zoning designation on a 2.75-acre parcel. (First Reading - 6/13/06)

Attorney Gougelman read the ordinances by title. There were no disclosures by Council and no comments during the public hearing.

Moved by Hand/Walker for approval of Ordinance No. 2006-53. The roll call vote was:

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

Motion carried unanimously.

Moved by Contreras/LaRusso for approval of Ordinance No. 2006-54. The roll call vote was:

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

Motion carried unanimously.

16. ORDINANCE NO. 2006-55 (CPA-2005-22) AND ORDINANCE NO. 2006-56 (Z-2005-1049) JAMES & BARBARA EASTER: Ordinances providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial and a C-1 (Neighborhood Commercial) zoning designation on a 0.75-acre parcel, located at 2460 Aurora Road, east of Lansing Street. (Owner/Applicant/Representative – James & Barbara Easter)
  - a. Ordinance No. 2006-55/CPA-2005-22: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial on a 0.75-acre parcel. (First Reading – 6/13/06)
  - b. Ordinance No. 2006-56/Z-2005-1049: (Second Reading/Public Hearing) An ordinance providing for a C-1 (Neighborhood Commercial) zoning designation on a 0.75-acre parcel. (First Reading - 6/13/06)

Mr. Gougelman read Ordinance No. 2006-55 and 2006-56 by title. The City Council made no disclosures and there were no comments during the public hearing.

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Moved by Hand/Palmer for approval of Ordinance No. 2006-55. The roll call vote was:

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

Motion carried unanimously.

Moved by LaRusso/Palmer for approval of Ordinance No. 2006-56. The roll call vote was:

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

Motion carried unanimously.

17. ORDINANCE NO. 2006-57 (CPA-2005-23) AND ORDINANCE NO. 2006-58 (Z-2005-1050) DANIEL BARNETT STATE FARM: Ordinances providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial and an R-P (Residential Professional) zoning designation on a 0.24-acre parcel, located at 515 East Eau Gallie Boulevard, east of South Patrick/Riverside Drive. (Owner – Laura D. Barnett & Daniel L. Barnett, Co-Trustee) (Applicant – Daniel Barnett State Farm) (Representative – Daniel Barnett)

- a. Ordinance No. 2006-57/CPA-2005-23: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial on a 0.24-acre parcel. (First Reading – 6/13/06)
- b. Ordinance No. 2006-58/Z-2005-1050: (Second Reading/Public Hearing) An ordinance providing for an R-P (Residential Professional) zoning designation on a 0.24-acre parcel. (First Reading - 6/13/06)

Attorney Gougelman read the ordinances by title. There were no disclosures by Council and the public hearing was opened and closed with no comments.

Moved by Walker/LaRusso for approval of Ordinance No. 2006-57. The roll call vote was:

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

Motion carried unanimously.

Moved by LaRusso/Palmer for approval of Ordinance No. 2006-58. The roll call vote was:

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

Motion carried unanimously.

18. ORDINANCE NO. 2006-59 (CPA-2005-24) AND ORDINANCE NO. 2006-60 (Z-2005-1052) AURORA WOODS: Ordinances providing for a Comprehensive Plan Amendment designating a Future Land Use of SER (Suburban Estate Residential) and an R-1AA

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(Single-Family Residential) zoning designation on a 24-acre subdivision, located on the south side of Aurora Road, west of Easy Street and Wickham Road. (Applicant – City of Melbourne pursuant to a pre-annexation and utility agreement with Joyal Enterprises)

- a. Ordinance No. 2006-59/CPA-2005-24: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of SER (Suburban Estate Residential) on a 24-acre subdivision. (First Reading - 6/13/06)
- b. Ordinance No. 2006-60/Z-2005-1052: (Second Reading/Public Hearing) An ordinance providing for an R-1AA (Single-Family Residential) zoning designation on a 24-acre subdivision. (First Reading - 6/13/06)

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

Moved by Palmer/Hand for approval of Ordinance No. 2006-59. The roll call vote was:

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

Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2006-60. The roll call vote was:

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

Motion carried unanimously.

19. ORDINANCE NO. 2006-61 (CPA-2005-25) AND ORDINANCE NO. 2006-62 (Z-2005-1053) EL DORADO AREA ANNEXATION: Ordinances providing for a Comprehensive Plan Amendment designating a Future Land Use of SER (Suburban Estate Residential) and zoning designations of REU (Rural Estate Use) and AEU (Agricultural Estate Use) on 123.45 acres of privately owned land, located south of Parkway Drive, west of Turtle Mound Road, and east of Harlock Road. (Applicant – City of Melbourne)
  - a. Ordinance No. 2006-61/CPA-2005-25: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of SER (Suburban Estate Residential) on 123.45 acres. (First Reading – 6/13/06)
  - b. Ordinance No. 2006-62/Z-2005-1053: (Second Reading/Public Hearing) An ordinance providing for REU (Rural Estate Use) on 116 acres and AEU (Agricultural Estate Use) zoning designations on a 7.5 acres. (First Reading - 6/13/06)

Attorney Gougelman read Ordinance No. 2006-61 and Ordinance No. 2006-62 by title. There were no disclosures by City Council and no comments during the public hearing.

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Moved by Contreras/LaRusso for approval of Ordinance No. 2006-61. The roll call vote was:

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

Motion carried unanimously.

Moved by Palmer/Walker for approval of Ordinance No. 2006-62. The roll call vote was:

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

Motion carried unanimously.

20. ORDINANCE NO. 2006-63 (CPA-2005-26) AND ORDINANCE NO. 2006-64 (Z-2005-1054) DEERWOOD TRAIL AREA ANNEXATION: Ordinances providing for a Comprehensive Plan Amendment designating a Future Land Use of SER (Suburban Estate Residential) and an REU (Rural Estate Use) zoning designation on 261± acres of privately owned land, located on Deerwood Trail and Parkway Drive between Turtle Mound Road and Harlock Road. (Applicant – City of Melbourne)

- a. Ordinance No. 2006-63/CPA-2005-26: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of SER (Suburban Estate Residential) on 261± acres. (First Reading – 6/13/06)
- b. Ordinance No. 2006-64/Z-2005-1054: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate Use) on a 261± acres. (First Reading - 6/13/06)

Attorney Gougelman read both ordinances by title. There were no disclosures by Council and no comments from the audience.

Moved by Hand/Walker for approval of Ordinance No. 2006-63. The roll call vote was:

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

Motion carried unanimously.

Moved by Contreras/Hand for approval of Ordinance No. 2006-64. The roll call vote was:

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

Motion carried unanimously.

21. ORDINANCE NO. 2006-65 (CPA-2006-27) PALM BAY 20, INC.: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial/Medium Density Residential on an 11.1±-acre portion and

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Medium Density Residential on a 6.29±-acre portion of 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) (First Reading - 6/13/06)

The City Attorney read the ordinance by title. The public hearing was opened and closed with no comments.

Moved by Walker/LaRusso for approval of Ordinance No. 2006-65. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

22. CONSENT AGENDA:

At the request of Council Member LaRusso, items “a” and “i” were removed from the consent agenda.

Moved by Hand/Contreras for approval of the consent agenda, with the exception of items “a” and “i.” Motion carried unanimously.

- a. Supplement No. 1 to the Continuing Planning Consultant Contract to provide community visioning/facilitation and assistance with the designation of an Urban Service Boundary, Land Design Innovations, Winter Park, FL – amount not to exceed \$39,040.

(See Item 23 for action on “a.”)

- b. Approval of an Emergency Relief Program Agreement between the City of Melbourne and the State of Florida, Department of Transportation to provide assistance for Hurricane Wilma at a maximum limiting amount of \$40,000 from the Federal Highway Administration emergency relief program funding for traffic signal repair; and authorization for the City Manager to execute the agreement and all other documents pertaining thereto.
- c. Contract award for Arbitrage Rebate Compliance Services for all outstanding bond issues, PFM Asset Management LLC, Harrisburg, PA – estimated annual cost of \$12,000 for the Water & Sewer System and \$5,500 for the General Fund; and authorization for the City Manager to execute the engagement letter.
- d. Contract award for the purchase and delivery of ferric sulfate, Kemiron Companies, Inc., Lawrence, KS - \$1.126/gallon; estimated annual cost of \$1,013,400.

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- e. Approval of a 48-month lease/purchase of 132 E-Z-Go TXTE Electric Golf Carts, E-Z-Go Textron, Longwood, FL - \$300,121.20 (total 48 months cost).
- f. Contract award for the purchase of police uniforms at stated per unit prices, Space Coast Uniforms, Cocoa, FL – estimated annual cost of \$115,000.
- g. Contract award for diesel generator maintenance and repair at the Wastewater Treatment and Water Production Divisions at per unit rates, Ring Power Corporation, Palm Bay, FL - estimated annual cost of \$81,951.
- h. Purchase of two 2006 Ford F-250 trucks, Duval Ford, Jacksonville, FL - \$32,622.
- i. Contract award for surface preparation and painting of the exterior of the Melbourne Auditorium, Bonner Coatings, Inc., Melbourne, FL - \$26,335.

(See Item 23 for action on “i.”)

- j. Contract award for banking services, SunTrust Bank, Melbourne, FL – unit prices/rates as quoted in the proposal; authorization for the City Manager to execute the contract and make minor revisions thereto.
- k. Contract award for disaster debris management services, Beck Disaster Recovery, Inc., Orlando, FL – rates as quoted in the proposal for Longboat Key, FL; authorization for the City Manager to execute the contract and to provide notice to proceed in the event of a natural disaster.
- l. Amendment No. 3 to the agreement between the City of Melbourne and Community Housing Initiative, Inc. to award \$500,000 in Hurricane Housing Recovery Program funds for the continued implementation of the City’s Purchase Assistance Program and \$7,354 to CHI to carry out Housing Counseling and Homebuyer Education; authorization for the City Manager to execute the amended documents; and approval of related budget adjustments to reallocate \$500,000 from the Housing Rehabilitation account to the Purchase Assistance Program account.
- m. Approval of a revision to the Hurricane Housing Recovery Program Housing Delivery Goals Chart and authorization to submit the revision to the Florida Housing Finance Corporation.
- n. Resolution No. 1987: A resolution authorizing the defeasance of Airport Refunding Revenue Bonds, Series 1996 and providing other authorizations necessary to complete the cash defeasance.
- o. Resolution No. 1988: A resolution granting an easement to Florida Power & Light in conjunction with Fire Station #78 along Eber Road.
- p. Resolution No. 1989: A resolution adopting the name “McGraw Avenue” for a private street adjacent to the Lake Washington Water Treatment Plant.

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23. ITEMS REMOVED FROM THE CONSENT AGENDA

- a. Supplement No. 1 to the Continuing Planning Consultant Contract to provide community visioning/facilitation and assistance with the designation of an Urban Service Boundary, Land Design Innovations, Winter Park, FL – amount not to exceed \$39,040.

Mr. LaRusso said that he is satisfied with the additional information he received from the City Manager. He asked Council to approve with no discussion.

Moved by LaRusso/Hand for approval of Item “a” as recommended. Motion carried unanimously.

- i. Contract award for surface preparation and painting of the exterior of the Melbourne Auditorium, Bonner Coatings, Inc., Melbourne, FL - \$26,335.

Mr. LaRusso said he wanted clarification on the disparity between the pricing. Five bids were received ranging from \$26,000 to \$140,000. Additionally, the low bidder did not acknowledge “addendum number one.”

Mayor Goode noted that a representative from Bonner Coatings submitted a request to speak; however, this is a Council action item.

Director of Finance Michele Ennis reported that often bidders do not acknowledge bid addendums and staff simply notes that. She said that the low bidder did meet with staff and went over the addendum items. Ms. Ennis reviewed the addendum and stated that there is nothing substantial in the addendum.

In response to Mr. LaRusso, Ms. Ennis confirmed that staff’s recommendation is to award the bid to Bonner.

Moved by LaRusso/Contreras for approval of Item “i.” Motion carried unanimously.

24. SITE PLAN APPROVAL (SP-2006-09) WUESTHOFF HOSPITAL EXPANSION: (Public Hearing) A request for site plan approval to allow a 71,305 sq. ft. expansion for three buildings on a 43.797±-acre parcel zoned M-1 (Light Industrial), located on the west side of Wickham Road, north of Technology Drive, and south of Sarno Road. (Owner/Applicant - Wuesthoff Health Systems, Inc.) (Representative - Jake Wise, PE, Construction Engineering Group) (P&Z Board - 6/01/06)

Mrs. Dittmer reported that the applicant would like to postpone this item for two Council meetings to allow time for them to review the condition added by staff. Mayor Goode asked if there was anyone in the audience present to speak on this item. There was no response. Mayor Goode stated that he would like to know about postponements at the beginning of Council meetings.

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Moved by Contreras/Meehan to postpone this item for two meetings (until the July 25 meeting). Motion carried unanimously.

25. ORDINANCE NO. 2006-66 TRAVEL ALLOWANCE: (First Reading) An ordinance amending Section 2 of the City Code, entitled Administration, by increasing the rates of subsistence meal allowance and mileage reimbursements in accordance with Florida Statutes.

Attorney Gougelman read the ordinance by title and Director of Finance Michele reviewed the agenda report.

Moved by Hand/Walker for approval of Ordinance No. 2006-66. Motion carried unanimously.

26. ORDINANCE NO. 2006-67 (CU-2005-05/SP-2005-10) GRAND MEADOWS C-STORE CARWASH ADDITION: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow the addition of a carwash to an existing gas station/convenience store in a C-2 (General Commercial) zoning district, 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.)

Attorney Gougelman read Ordinance No. 2006-67 by title and Mrs. Dittmer briefed Council. The following is an excerpt from the agenda report:

A conditional use for the existing convenience store with gas pumps was approved in 1999. The owner requested approval to add an accessory car wash, with a single-bay, at the south end of the existing business from City Council in 2005. The City's Planning and Economic Development Department recommended approval of the conditional use and site plan. The City's Planning and Zoning Board *unanimously* recommended approval on August 4, 2005. On first reading of Ordinance No. 2005-101 granting the conditional use and approving the site plan, the City Council voted 4-2 *in favor* of the ordinance. However, on second reading of the ordinance, Council heard objections from a few residents of the Baymeadows Subdivision who complained of site maintenance and traffic issues without submitting traffic studies or factual data. Council unanimously denied the application on September 13, 2005.

In October 2005, Sarju's attorney filed a petition for writ of certiorari seeking to have the Council's denial of the conditional use with site plan reversed by the circuit court. The petition restated and summarized the applicant's factual and expert evidence, as well as the findings and conclusions of City staff and the Planning and Zoning Board, and alleged that Sarju met its burden of proving that the application for conditional use with site plan fully complies with the City's Comprehensive Plan and Code of Ordinances and therefore should have been granted.

The applicant's argument was that there was no evidence to support the denial other than unsupported complaints of traffic problems by Baymeadows' residents and complaints that

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Sarju had kept its property in an unsightly condition. The case was highly similar to the Flowers Baking Company case that the City lost in the 1980s.

At the request of the City, Kim Rezanka, attorney for Sarju, personally attempted to follow-up with the residents and basically encountered objections to traffic. The applicant proposed a settlement, agreeing to paint both sides of a buffer wall buffering the neighboring Baymeadows Subdivision, to work with the City Engineer regarding the service station/car wash curb cut onto Grand Meadows Boulevard, and to fully release the City and the Council from liability for the denial of the conditional use. The City agreed to reconsider the conditional use request.

The Council approved the Settlement Agreement, which was submitted to and approved by the circuit court. The City Attorney has recommended that the Council approve the conditional use and site plan, subject to the staff recommended conditions of approval.

No additional parking is required for the use and existing parking spaces will be relocated on-site. Additionally, a proposed “exit” only access point is proposed onto Grand Meadows Boulevard. As per the settlement agreement, an additional condition has been added regarding painting and maintaining the buffer wall, which faces Baymeadows Subdivision.

The recommendation is for approval of Ordinance No. 2006-67, subject to the findings and conditions contained in the Planning and Economic Development Department staff memorandum and the conditions contained in the ordinance, including the following condition:

- d. At the request of residents of Baymeadows, the west side of the buffer wall between Baymeadows Subdivision and the applicant’s property has been painted a light color by and at the expense of the owner/developer of the property. The east side of the buffer wall between Baymeadows Subdivision and the applicant’s property shall be painted a light color by and at the expense of the owner/developer of the property. Painting shall be completed prior to issuance of a certificate of occupancy/completion by the City for the car wash, and thereafter, the painting on both sides of the wall shall be continuously maintained in a bright, mar-free and non-peeling condition.

Mayor Goode pointed out that this is part of a settlement agreement; therefore, Council does not have a lot of choice. The Mayor opened the public hearing.

John Mutschler, 4565 Grand Meadows Boulevard, informed Council that the gas station was originally constructed over the objections of the Baymeadows residents. He noted that the business now contains a propane tank station and a truck rental. Mr. Mutschler said that this is a school bus stop. He asked how much more the owner expects the residents to put up with. Mr. Mutschler concluded by listing the car washes in the area.

Mayor Goode said that the court has told us that we don’t have a choice. Mr. Mutschler replied that the City ought to try and overturn the decision.

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Dale Haidet, 3225 Cedar Bay Drive, said that it is disheartening to learn that the wishes of the homeowners can't be followed after the City Council denied this request. He asked if all of the residents' comments were forwarded to the court.

Attorney Gougelman said that the entire verbatim record of the hearing before City Council was presented to the circuit court. Mayor Goode asked the cost to defend that decision. Attorney Gougelman said approximately \$7,500.

Mr. Haidet said that the owner is going to put in another entrance to make a U-turn for the car wash and the residents highly object.

Vincent Germann, 3685 Kestrel Court, said that he lives within 500', yet he did not receive a notice about this meeting.

Mayor Goode said that notices aren't mailed when we are under a directive from the judicial system. The Mayor added that Mr. Germann obviously found out about the meeting since he is here.

Mr. Germann explained that the dumpster is currently located in the southwest corner of the property. He asked if it could be moved to the north, which would allow enough room for cars exiting the car wash to make a U-turn. This change would allow the existing entrance/exit to be used without the need for another curb cut.

Attorney Gougelman said he would forward those comments to the applicant's attorney.

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

Mr. Contreras asked if the applicant or applicant's representative was present. There was no response from the audience.

Mrs. Palmer said that there are two other businesses on the property, including a nail salon and another storefront. She asked if the site has adequate parking for all those businesses. Mrs. Dittmer said that staff reviewed the parking requirements today and found that the applicant meets all the parking requirements.

In response to Mr. LaRusso, Attorney Gougelman discussed the history of the first litigation on this property with regard to the gas pumps. He noted that this case relates only to the car wash and no other uses on the site.

Mr. Contreras disclosed that he met with Attorney Rezanka in October and December 2005 and he encouraged her to communicate with the Baymeadows Homeowners' Association. In December Ms. Rezanka said she had not received replies to her phone calls and letters.

Moved by Meehan/Goode for approval of Ordinance No. 2006-67 subject to the findings and conditions, including the new condition "d." The roll call vote was:

Aye: LaRusso and Meehan

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Nay: Contreras, Walker, Palmer, Hand and Goode

Motion failed. (See new vote taken below.)

Attorney Gougelman informed Council that the City will be looking at a damage lawsuit. Several members indicated that they would be willing to change their vote. Mayor Goode asked Council to disregard the first roll call vote. He asked for the vote to be taken again:

The question was called. Motion carried. (Council Member Contreras and Vice Mayor Hand voted nay.)

The Council Members who voted aye indicated that they did so under duress. Mayor Goode added that he can't vote to spend good money after a bad decision.

27. ORDINANCE NO. 2006-68 (AR-2006-198), ORDINANCE NO. 2006-69 (CPA-2006-07), AND ORDINANCE NO. 2006-70 (Z-2006-1067) J. WILLIAM WOODSON: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on a 1.33-acre parcel, located south of the southeast corner of the intersection of Buena Vista Avenue and Sand Lake Drive, west of I-95 and south of Lake Washington Road. (Owner/Applicant - J. William Woodson) (Representative - Clifton A. McClelland, Jr.) (P&Z Board - 5/18/06)
- a. Ordinance No. 2006-68/AR-2006-198: (First Reading/Public Hearing) An ordinance providing for annexation of a 1.33-acre parcel.
  - b. Ordinance No. 2006-69/CPA-2006-07: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential on a 1.33-acre parcel.
  - c. Ordinance No. 2006-70/Z-2006-1067: (First Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate Use) a 1.33-acre parcel.

The City Attorney read each ordinance by title. Mrs. Dittmer briefed Council and noted that the Planning and Zoning Board voted unanimously to recommend approval of this request.

Mayor Goode asked what the concerns are. Mrs. Dittmer said that the area residents are concerned about access through their subdivision. She noted that the zoning ordinance contains the following condition:

"Access to the subject parcel from Buena Vista Avenue shall require approval by Brevard County."

The Mayor opened the public hearing.

Clifton McClelland, attorney representing the applicant, discussed the background of this property. His client owns the subdivision to the south of this property, which has been

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involved with litigation between the City and his client over the years. A settlement was reached on access and by court order that access is to be provided from the north. His client would like to annex this leg into the City. It is the last remaining parcel they have in the vicinity and they want to join that land and make it part of the City of Melbourne. Attorney McClelland stressed that access has already been litigated and is part of a court order.

Edmund K. Zahn, 5005 Laguna Vista Drive, stated that he is a resident of Lake Washington Estates. He said that this access will increase the traffic to what was a fairly enclosed neighborhood, and the neighbors believe that this will be detrimental to the neighborhood. He added that the applicant can't obtain access without this change in zoning and the residents believe this is a slight of hand.

Maxine Lauer, 5440 Sand Lake Drive, informed Council that she is speaking on behalf of the Lake Washington Homeowners' Association. Approximately 20 – 25 people stood in the audience in support of Ms. Lauer.

Continuing, Ms. Lauer said that the area residents object. She added that they see this as a precursor to Buena Vista Avenue providing access to the Lake Pointe Subdivision. Ms. Lauer stated that their subdivision can't withstand additional traffic. Additionally, she noted that it is the residents' understanding that the County has denied access to Buena Vista Avenue.

Mayor Goode reminded the audience that the zoning ordinance contains a condition that access to Buena Vista Avenue from the subject property will require approval by Brevard County.

Sandra Taylor, 5220 Sand Lake Drive, reported that she lives in Lakewood Manor Estates, which is adjacent to the subject property. She asked why this property was not made a part of the Lake Pointe Subdivision and suggested that it was for the sole purpose of gaining access through the adjacent community. She added that access to this one lot should be through Lake Pointe. Ms. Taylor said she spoke with a representative at the County today who confirmed that the County has denied the driveway permit to Buena Vista Avenue.

Richard Oktela, 2175 Buena Vista Avenue, said he lives 400' from the subject property. He asked Council to deny the annexation. Mr. Oktela reported that this area is in the floodplain. He noted that he has photographs of previous hurricanes, which show water in the streets. More homes will invite floods. And, adding another 300 – 400 cars per day through a one way in/out subdivision is out of the question.

Mr. Oktela informed Council that he built his home in 1997 on the corner of Buena Vista. He spent one million dollars on the house and the County assured him that there would never be any building on the subject property because it is wetlands. Yet, now we are putting up approximately 50 homes. Mr. Oktela reported that the applicant or his grandson cleared an acre to an acre and one half about two weeks ago and they have constructed a dock from old lumber skids. He questioned whether a permit is needed to construct a dock. Mr. Oktela submitted photographs showing the cleared property and dock.

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In response to the Mayor, Mr. Oktela showed the area on the map that has been cleared.

A brief discussion followed regarding flooding on the property. Mr. Oktela confirmed that flooding occurs during “normal summertime gully washers” as well as hurricanes.

Sheila Nost, 5385 Sand Lake Drive, stated that the County shut the door on the applicant from using their neighborhood as access. She said now the applicant is trying to annex into the City so they can obtain a permit through the City. She explained that their road is small and it cannot accommodate two cars coming around the curve. Ms. Nost stressed that the applicant has access through Jones Road and they need to stay with that.

Cheryl Harding, 5115 Pina Vista Drive, expressed concern about construction trucks that will eventually turn at her house to access the property. She noted that she has been told that there could be 300 – 500 additional cars per day through their subdivision – a subdivision that was safe and quiet. A north entrance through their property would allow someone to commit robbery or burglary, access I-95 and then get away.

Continuing, Ms. Harding said that the applicant has access from Jones Road; however, he wants to access their subdivision for aesthetic reasons. This will make his subdivision more valuable and attractive.

Attorney Gougelman confirmed for Mr. Contreras that a permit from some local government would be required to construct a dock.

Pat Poole, 805 East Palmetto Avenue, encouraged Council to review the history of this property. She stated that it is clear that the applicant wishes to annex in order to use Buena Vista for the Lake Pointe Subdivision. This is a quiet subdivision with beautiful homes and she disagrees with the findings in Ordinance No. 2006-69 that this will “promote and protect the public health, safety, comfort, good order, appearance, convenience, aesthetics and general welfare...” Mrs. Poole concluded by saying that the County will be the salvation because they won’t allow access to Buena Vista.

Attorney McClelland returned to the podium and reported that his client didn’t construct the dock, has nothing to do with the dock, and will remove the dock tomorrow. Mr. Contreras asked if he had any idea who constructed the dock and, from the audience, Mr. Woodson replied no.

Continuing, Mr. McClelland said they are not aware of the driveway permit being denied by the County. The County has not acted on their application.

Mr. Contreras asked about the clearing on the property. Mr. McClelland said it is his understanding that his client obtained the City’s consent for work that was done. Following a brief discussion, Mr. Woodson said he cleared a 10’ trail to the lake. The clearing began on property in the City; however, the property that abuts the lake is not in the City. He explained that he spoke to someone at the City about clearing a trail and was assured that would not be a problem.

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Mr. Woodson reminded Council that about a year and a half ago, the City accessed his property and dumped rubble to construct a temporary road to reach and repair a watermain break.

Mr. Woodson concluded by saying he would remove the dock tomorrow.

That concluded comments from the audience and the Mayor closed the public hearing.

Mrs. Walker asked what the advantage would be to the City to annex this property. Mr. Schluckebier said he does not know that there would be a benefit if annexed or that it would be a detraction if annexed. The property owner made a request to annex in order to make the land uniform for development purposes. With regard to access, the County would have to approve access to Buena Vista Avenue, whether this property is located in the City or the County. That is a fairly straightforward condition and it is our understanding that the applicant has accepted this condition. Without that condition, we would need more time at the staff level to review the consequences. But, Council is not being asked to grant permission to access so this action will simply align the property in a uniform way.

Mrs. Hand asked why we need to take action until we know whether or not the County is going to grant access. Mr. Schluckebier said that he does not know whether the applicant has a timeline. Mr. Contreras asked what the fallback position is if access is denied by the County. He noted that the City's ordinances require two entrances. Mrs. Dittmer said that the preliminary plat for Lake Pointe has only one access paved through Buena Vista. Per the litigation, the roadway will not be paved to Jones Road. We could not require that connection to Jones road in 2003 when the preliminary plat was before Council. If/when Jones Road is paved, there will be right-of-way that will allow them to make that connection. If the applicant is denied access, the only option would be to come southward to Jones Road. She added that staff has not contemplated the answer if the County denies access.

Attorney Gougelman said the answer is that the applicant would look at filing an inverse condemnation lawsuit against the County.

Mrs. Palmer asked if approval or denial of the annexation would affect whether or not the applicant can make the Buena Vista access. Mrs. Dittmer said she does not believe it does. Whether located in the City or the County, the applicant would still be required to obtain approval by the County.

Mrs. Palmer stated that there must be something about this decision that impacts the access or connection. She asked the folks in the audience to make Council aware.

Mrs. Dittmer added that the result of past litigation is that we could not require the access to Jones Road. The litigation left us no other option for access other than Buena Vista.

Attorney Gougelman said that these are all good questions that should be posed to the applicant's counsel.

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Mrs. Palmer asked Mr. McClelland if the City has landlocked his client or if his client landlocked himself by demanding this entrance.

Attorney McClelland said that Brevard County required dedication of this property as a public road from Judge Woodson's property in 1971. The County had a policy of requiring two accesses to every subdivision. In the 1980s when his client began its development, access was sought through the extension into the Lake Washington development. The final judgment in the court decision is that the developer has access through a particular road. Essentially, the City and the applicant are dealing with the fact that there has already been 20 years of litigation. The court decision also says that as a condition Melbourne cannot require the paving of Jones Road up to this property. And, it is his understanding that the Jones Road exit may only be used as an emergency access. Judge Woodson is one of the primary developers of the subdivision where (the people who are opposed live). This action is just another segment of his property as he is moving south.

Continuing, he stated that it is their position that they have a legal right to access through the Lake Washington development. If the County wants to deny that, he is sure that they will allow the circuit judges of Brevard County to make the determination about how much they want to pay in terms of loss of his client's rights.

Mrs. Palmer asked how approval or denial of the annexation would impact access. Mr. McClelland replied that their position is that they have the legal right to use this access. He added that it is good for the City; the road will be built to the City's standards. And, it is better for the property to be under one governmental unit.

Mrs. Walker asked if the people who are protesting have a legal right to protect their homes and their property. Attorney McClelland said he believes his client has met the requirements that have been imposed. The level of service analysis shows that the 50' right-of-way is adequate to handle the traffic.

Mr. Contreras said it becomes a moot point whether the City approves or not. If the County denies access, the litigation would be to the County – not to the City of Melbourne.

Attorney Gougelman replied that is probably correct. He added that it is always prudent for a property owner to have the permitting of a development under one jurisdiction. Two permitting jurisdictions allow an opportunity for confusion.

Mr. Contreras asked Mr. McClelland if his client will move forward with the County to gain approval of a driveway permit if this annexation is denied by the City. Mr. McClelland replied that he doesn't know and that they make each decision as they move along.

Moved by Hand/Walker to postpone this item until the County determines whether or not they will allow access. The vote was:

Aye: Walker and Hand

Nay: Contreras, LaRusso, Meehan, Palmer and Goode

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Motion failed.

Moved by Meehan/Palmer to approve Ordinance No. 2006-68.

Mrs. Palmer stated that she understands that the area residents don't want this property to be developed and that this is located in a floodplain. However, she pointed out that the area residents also built on a floodplain. She commented that the City has to consider the past litigation and that the County will have to grant access to this property. She concluded by saying she is not willing to deny the applicant access to his property.

The question was called. The roll call vote was:

Aye: Contreras, Meehan, Palmer and Goode

Nay: LaRusso, Walker and Hand

Motion carried.

Moved by Meehan/Palmer for approval of Ordinance No. 2006-69. The roll call vote was:

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

Nay: Hand

Motion carried.

Moved by Palmer/Meehan for approval of Ordinance No. 2006-70 with the additional condition regarding removal of the dock.

Mr. Woodson confirmed from the audience that he will have the dock removed within one day. In response to Attorney Gougelman, Attorney McClelland confirmed that they also agree with the condition about access.

The question was called. The roll call vote was:

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

Nay: Hand

Motion carried.

28. ORDINANCE NO. 2006-71 BEAUTIFICATION & ENVIRONMENTAL ADVISORY COMMITTEE: (First Reading) An ordinance amending Chapter 2 of the City Code, entitled Administration, as it relates to the Beautification and Environmental Advisory Committee; revising the composition of the Committee.

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The City Attorney read Ordinance No. 2006-71 by its title. The City Manager noted that these changes represent the view of the Beautification Committee that it could perform its tasks better if the composition of the committee were slightly modified.

Moved by Contreras/LaRusso for approval of Ordinance No. 2006-71.

Mr. Contreras referenced the agenda material, which indicates that staff is not ready to proceed with establishing a parks and recreation advisory committee. He asked if there is a timeframe.

Mr. Schluckebier said that staff worked with the Beautification Committee and the Golf Courses Advisory Committee on composition and possible realignment. Establishment of another committee was discussed; however, there was no propelling motion to go in this direction.

Mr. Contreras said he thought the Chairman of the Beautification Committee requested this during her presentation to Council. City Clerk Cathy Wysor explained that she spoke with the Beautification Committee and the Golf Courses Committee about merging the two boards if a parks and recreation advisory committee were formed. Staff presented the idea of forming a new committee to the Beautification Committee. The members of the Beautification Committee wanted to make it clear to Council that they were willing to accept those duties if a new board were formed.

A brief discussion continued. Mr. Contreras commented that he is not trying to create something that is not necessary. He just wanted to ensure that committees were developing synergy with each other and communicating, which will benefit the entire City. The City Manager added that the resident opinion survey revealed that parks and recreation rated high on what we have and what we are offering.

The question was called. Motion carried unanimously.

29. ORDINANCE NO. 2006-72 CITIZENS' ADVISORY BOARD: (First Reading) An ordinance amending Chapter 2 of the City Code, entitled Administration, as it relates to the Citizens' Advisory Board, amending Sections 2-116 through 2-120 by repealing the requirement for City Manager to serve as ex officio member of the board; repealing the requirement for by-laws; and updating duties, goals, and objectives.

Attorney Gougelman read Ordinance No. 2006-72 by title.

Mr. Schluckebier said that these ideas came from the Citizens' Advisory Board during its presentation to Council. He referenced the amendment, which will remove him as an ex officio member of this committee, and noted that having staff on any board presents an operating problem. Members expect to have direct conversation with staff, which is prohibited because of the Sunshine Law. That was never the intent.

Moved by Hand/Walker for approval of Ordinance No. 2006-72. Motion carried unanimously.

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30. ORDINANCE NO. 2006-73 GENERAL EMPLOYEES' PENSION PLAN: (First Reading) An ordinance amending Chapter 23 of the City Code, Retirement and Pensions, Article VII, General Employees' Pension Plan, to incorporate applicable provisions of federal law and state statutes and improve recruitment.

Attorney Gougelman read the ordinance by title. Deputy City Manager Amy Elliott said that this is mainly an effort to update the plan to comply with state and federal laws. There are a couple of amendments that will help with recruitment efforts – all with no financial impact to the pension plan.

Moved by Palmer/Contreras for approval of Ordinance No. 2006-73. Motion carried unanimously.

31. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Council Member Richard Contreras reported that at its June 26 meeting the Zoning Board of Adjustment considered an interpretation of the Code as it pertains to recreational vehicles parked in front of a home. The interpretation of the Code Officer was overturned (which means that "front building line" is interpreted to mean that vehicles may be parked or stored along the side or behind the structure).

Additionally, he displayed a photograph of the subject recreational vehicle, which also shows an automobile parked on the lawn.

Following a brief discussion, staff confirmed that the City Code does not require that parking be on improved surfaces for single-family and duplex structures.

Mr. Contreras said it appears that we have two loopholes in our Code that need to be addressed. He asked staff to investigate. He added that at that same meeting there was quite a bit of discussion about the City's code enforcement effort being reactive rather than proactive. As the City is growing and new residents are moving in, people may not be aware of our ordinances. He asked staff to look into different ways to educate the public about our codes. He also asked staff to consider whether we could take advantage of training from the Institute of Government to improve our code enforcement activities.

Council Member Cheryl Palmer said that people should be allowed to park on the grass in front of their homes, and she doesn't want to send Code Enforcement house to house looking for violations.

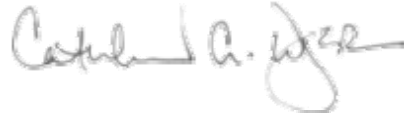
A brief discussion continued. The City Manager said that staff will return with recommendations for improvements.

32. ADJOURNMENT

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

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The meeting adjourned at 9:12 p.m.



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City Clerk – 7/6/2006

Approved by Council: \_\_\_\_\_