

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 11, 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. Dr. H. A. Dean, Riverside Baptist 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
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

None.

5. Approval of Minutes – June 27, 2006 Regular Meeting

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

Mayor Goode announced that Attorney Phil Nohrr, the representative for Items 18 and 20, has asked for postponement until the July 25 Council meeting.

6. City Manager's Report

City Manager Jack Schluckebier reported on the following items:

- The City received a communication from Brevard County that it intends to advertise and consider increasing its transportation impact fees to a level recommended by an outside consultant approximately six years ago. This will appear on the Commission's August 8 agenda for consideration.
- Melinda Maddox has resigned from the Police Officers' Retirement Trust Fund Board of Trustees.

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7. Public Comments

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2006-45 (CU-2005-19/SP-2004-19) PARKWAY COMMONS, PHASE ONE: (First Reading/Public Hearing) An ordinance granting a conditional use to allow a multi-family residential development on 19.21+ acres zoned C-P (Commercial Parkway), in conjunction with the adjacent 5.57± acres zoned R-2 (One-, Two- and Multiple-Family Residential), for a total of 24.78± acres at a density of 6.7± units per acre and site plan approval on the Phase 1 portion (24.78 acres) of the overall 30.1±-acre property, located on the north side of Parkway Drive, West of Wickham Road. (Owner/Applicant - Wickham Corporate, LLC) (Representative - Brad Smith, Brad Smith Associates, Inc.) (Postponed - 5/23/06)

By consensus, Council postponed this item until the July 25 meeting at the request of the applicant's representative.

9. ORDINANCE NO. 2006-66 TRAVEL ALLOWANCE: (Second Reading/Public Hearing) 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. (First Reading - 6/27/06)

City Attorney Paul Gougelman read Ordinance No. 2006-66 by title. The public hearing was opened and closed with no comments.

Moved by Meehan/Contreras for approval of Ordinance No. 2006-66. The roll call vote was:

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

Motion carried unanimously.

10. ORDINANCE NO. 2006-67 (CU-2005-05/SP-2005-10) GRAND MEADOWS C-STORE CARWASH ADDITION: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow 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.) (First Reading - 6/27/06)

The City Attorney read the ordinance by title. The Mayor asked Attorney Gougelman to brief Council (see June 27 minutes for excerpt from agenda report). There were no disclosures by Council and no comments during the public hearing.

Moved by Meehan/LaRusso for approval of Ordinance No. 2006-67. The roll call vote was:

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Aye: LaRusso, Meehan, Walker, Palmer and Goode

Nay: Contreras and Hand

Motion carried.

The members who voted aye said they did so reluctantly.

11. 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.)
- a. Ordinance No. 2006-68/AR-2006-198: (Second Reading/Public Hearing) An ordinance providing for annexation of a 1.33-acre parcel. (First Reading - 6/27/06)
 - b. Ordinance No. 2006-69/CPA-2006-07: (Second 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. (First Reading - 6/27/06)
 - c. Ordinance No. 2006-70/Z-2006-1067: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate Use) a 1.33-acre parcel. (First Reading - 6/27/06)

Attorney Gougelman read each ordinance by title and briefed Council on the history of this property. He noted that at this point there is no pending litigation; however, the City has been in court twice over the last 15 years regarding the property to the south. The subject property will be the entryway to the parcel to the south. In the 1989-1990 litigation, the City attempted to funnel entry to the southern parcel via Jones Road. The circuit court ruled that the City could not enforce this requirement. The only paved roadway to the project is through the north, which goes through this 1.33-acre parcel. The second lawsuit relates to use of septic systems on the southern parcel. The City was hit with an inverse condemnation action and had to pay \$600,000 to the developer.

Attorney Gougelman stated that staff's recommendation is for approval. He added that it seems to work better for all concerned if the regulatory jurisdiction and permitting for a project is not split between two or more jurisdictions.

Council Member Cheryl Palmer disclosed that she spoke with Mrs. Pat Poole about this item. Mayor Goode opened the public hearing.

Clifton McClelland, attorney representing the applicant, said that staff has adequately covered the subject at this meeting and the previous meeting.

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Pat Poole, 805 East Palmetto Avenue, encouraged Council to look at how this will affect the surrounding residents. She pointed out that the applicant has access to Jones Road. Brevard County required the connection to Jones Road – they did not require that Jones Road be paved. She closed by saying that she believes the City is agreeing with the annexation out of fear of another lawsuit.

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

Moved by Contreras/Meehan for approval of Ordinance No. 2006-68. 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 Contreras/Meehan for approval of Ordinance No. 2006-70. The roll call vote was:

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

Nay: Hand

Motion carried.

12. ORDINANCE NO. 2006-71 BEAUTIFICATION & ENVIRONMENTAL ADVISORY COMMITTEE: (Second Reading/Public Hearing) 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. (First Reading - 6/27/06)

Attorney Gougelman read the ordinance by title. He confirmed for Mrs. Palmer that it is difficult for staff to “staff this board” while serving as a member and operating within the Sunshine Law.

There were no public comments.

Moved by Walker/Hand for approval of Ordinance No. 2006-71. The roll call vote was:

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

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Motion carried unanimously.

13. ORDINANCE NO. 2006-72 CITIZENS' ADVISORY BOARD: (Second Reading/Public Hearing) 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. (First Reading - 6/27/06)

Attorney Gougelman read Ordinance No. 2006-72 by title. There were no public comments.

Moved by LaRusso/Walker for approval of Ordinance No. 2006-72. The roll call vote was:

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

Motion carried unanimously.

14. ORDINANCE NO. 2006-73 GENERAL EMPLOYEES' PENSION PLAN: (Second Reading/Public Hearing) 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. (First Reading - 6/27/06)

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

Moved by Contreras/LaRusso for approval of Ordinance No. 2006-73. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

15. COUNCIL ACTION RE: Amendment No. 5 to the environmental consulting services contract for the Reverse Osmosis Water Treatment Plant concentrate discharge permit toxicity evaluation and numerical 3D model, Project No. 30103, Reiss Environmental, Inc., Winter Park, FL - \$430,000; transfer of \$108,892 from the RO Concentrate Disposal Project No. 31205 budget to this project budget, and appropriation of \$292,902 from Water & Sewer Prior Year Surplus.

City Engineer Jenni Lamb briefed Council. Council Member Mark LaRusso asked how long the permit would be in effect. Mrs. Lamb explained that the City is two years into the renewal process. She asked the City's consultant to provide further details.

Robert Reiss, Reiss Environmental, said that it is a five-year permit; however, while the application is being reviewed, that time is passing. When the permit is approved, the duration will be for the balance remaining on the five years.

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Mrs. Palmer asked if there are different criteria each time the permit is renewed. Mayor Goode said that depends on what the Legislature does. Mr. Reiss agreed and added that there have been modifications to the surface water discharge regulations in the state and that is part of the issue with this permit renewal. The City needs to provide reasonable assurance to the Florida Department of Environmental Protection that this permit will meet the current regulations.

Mrs. Palmer asked if the models and information will still be useful after this time period, or if we will have to repeat the process every five years. Mr. Reiss replied that during the next renewal, the modeling information can be revived and reused; however, there will still be additional data collection required.

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

16. CONSENT AGENDA:

Moved by Hand/Meehan for approval of the consent agenda (as recommended). Motion carried unanimously.

- a. Change Order No. 2 to the Front Street Park Seawall replacement contract for the Eau Gallie Pier demolition, Project No. 14205, CEM Enterprises, Inc., Apopka, FL - \$39,000.
- b. Supplement No. 290 to the Continuing Consultant's Contract for Lift Station 51 replacement of force sewer mains, Project No. 30705, Frazier Engineering, Inc., Melbourne, FL - \$31,000.
- c. First amendment to the interlocal agreement for the creation of the Brevard Metropolitan Planning Organization.
- d. Purchase of six Granular Activated Carbon filter replacements, Norit Americas, Inc., Marshall, TX - \$89,041/each for a total cost of \$534,246.
- e. Purchase of gasoline and diesel fuel, Glover Oil, Melbourne, FL and Petroleum Traders Corporation, Fort Wayne, IN - total estimated cost of \$254,893.
- f. Approval of a "piggy-back" to the Broward County contract for the purchase of fire hydrant refurbishment and valve replacement, Mueller Services Company, Tamarac, FL - unit pricing not to exceed \$140,000.
- g. Purchase of five Zoll AutoPulse® Non-invasive Cardiac Support Pump systems, Zoll Medical Corporation, Chelmsford, MA - \$16,844.90/each, for a total cost of \$84,224.50; and approval of the appropriation of \$63,169 in matching grant funds.
- h. Purchase of four DV1 Watch Guard Digital in-car video systems, Watch Guard Video, Plano, TX - \$19,817.50.

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- i. Resolution No. 1990: A resolution calling for a General Municipal Election to be held November 7, 2006 to elect three Council Members, one each, from Districts Two, Four and Six; specifying the terms of office for each.

17. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

18. ORDINANCE NO. 2006-74 (A&V NO. 293): (First Reading/Public Hearing) An ordinance vacating a 33-foot wide right-of-way known as Ridge Road. (Applicant - Veranda Park Development Corp.)

Attorney Gougelman read the ordinance by its title. Mrs. Palmer asked the length of the property and expressed concern about giving away this much property. City Engineer Jenni Lamb said it is approximately 750 – 800 feet long.

Moved by Meehan/Hand for approval of Ordinance No. 2006-74.

Mrs. Palmer said that this parcel is 33 feet wide by 750 – 800 feet long, which the applicant will use to develop the subdivision. She said she has a feeling that they might purchase this property from the City rather than the City vacating it.

Attorney Gougelman explained that in the 1930s the Florida Supreme Court made a ruling that a city could not sell right-of-way during an abandon and vacate proceeding. The court indicated that the taxpayers don't outright own right-of-way, rather it is similar to an easement. Actual sale of right-of-way is not a proper procedure.

Continuing, he said that this application was made in part due to his recommendation to clear a title problem. City staff was not able to find any records that support this being a roadway. The roadway has never been used by the general public. The real estate map used by the Engineering Department shows this as a "paper" roadway – a roadway that doesn't exist but for some reason the map assembler believes it does exist.

The question was called. Motion carried. Council Members Contreras and Palmer voted nay.

19. ORDINANCE NO. 2006-75 (CU-2006-10/SP-2006-15) DISCOVER LIFE CHURCH: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a 19,266 sq. ft. church on a 4.74±-acre parcel zoned R-P (Residential Professional), located on the north side of Eau Gallie Boulevard, east of John Rodes Boulevard, and west of Wickham Road. (Owner/Applicant - Kenneth Hitte) (Representative - Scott Lamb, P.E., Lamb & Associates) (P&Z Board - 6/15/06)

Attorney Gougelman read Ordinance No. 2006-75 by its title. Mrs. Dittmer briefed Council. The Planning & Zoning Board recommended approval of the single-sheet plan prepared by Lamb & Associates Inc., Project Number 05-1001, with a signed and sealed date of May 30,

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2006, to allow a church in an R-P zoning district, with the following conditions:

- a. Changes 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 City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.

- b. The applicant shall provide a right-turn/taper into the project, as determined by the City Engineering Department and permitted by the Florida Department of Transportation (FDOT) during the construction plan review process.
- c. Appropriate environmental permits must be obtained as part of the construction plan review process.
- d. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved. Buildings and parking/drive aisles shall be shifted where possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- e. A six-foot high masonry wall shall be constructed along the north and west property lines, where adjacent to the residential zoning districts.
- f. The proposed building shall be substantially consistent with the rendering submitted by the applicant.

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

Moved by Palmer/Walker for approval of Ordinance No. 2006-75. Motion carried unanimously.

20. ORDINANCE NO. 2006-76 (AR-2006-199), ORDINANCE NO. 2006-77 (CPA-2006-09), AND ORDINANCE NO. 2006-78 (Z-2006-1068) COMMUNITY TRAILER PARK, INC.: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation for an 8.243-acre parcel, located on the south side of Eau Gallie Boulevard, east Unity Drive, between Riverside Drive and Hwy. A1A. (Owner/Applicant - Community Trailer Park, Inc.) (Representative - Philip R. Nohr, Esq.) (P&Z Board - 6/15/06)

- a. Ordinance No. 2006-76/AR-2006-199: (First Reading/Public Hearing) An ordinance providing for annexation of an 8.243-acre parcel.
- b. Ordinance No. 2006-77/CPA-2006-09: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Commercial/Medium Density Residential on an 8.243-acre parcel.

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- c. Ordinance No. 2006-78/Z-2006-1068: (First Reading/Public Hearing) An ordinance providing for a zoning designation of R-2 (10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre) on an 8.243-acre parcel.

By consensus, Council postponed this item until the July 25 meeting at the request of the applicant's representative.

Mayor Goode announced that Council will convene as the Babcock Street Community Redevelopment Agency for the following item:

21. COUNCIL ACTION RE: Supplement No. 2 to the Continuing Consultant's Contract to provide an update to the Babcock Street Redevelopment Plan, Land Design Innovations, Winter Park, FL - amount not to exceed \$69,000.

Bob Jensen, Vice Chairman, Babcock Street Community Redevelopment Agency Advisory Committee, reported that the advisory committee supports the study. The last study was performed in 1997 and the Babcock Street area has changed dramatically in that time. The advisory committee spoke with principals from Land Design Innovations and a scope of work was provided. The committee reviewed the proposal and believes that this update will provide valuable demographic information. Additionally, it will show what the future holds for parcels coming into the district.

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

Council will reconvene for the remaining agenda items.

22. COUNCIL ACTION RE: Board Appointments

- a. Appointment of three regular members to the Beautification and Environmental Advisory Committee.

Mrs. Hand nominated Edwin Korzun. Moved by Contreras/Walker to close the nominations. Motion carried unanimously. Moved by Hand/Contreras to appoint Edwin Korzun. Motion carried unanimously. (July 11, 2006 through July 10, 2009)

Mr. Contreras nominated Frank Beckage. Moved by Meehan/LaRusso to close the nominations and to appoint Frank Beckage. Motion carried unanimously. (July 11, 2006 through July 10, 2009)

Mrs. Hand nominated Ronald Strandjord. Moved by Hand/Contreras to close the nominations. Motion carried unanimously. Moved by Hand/Contreras to appoint Ronald Strandjord. Motion carried unanimously. (July 11, 2006 through July 10, 2009)

- b. Appointment of one alternate member to the Building Board of Adjustment and Appeals.

Moved by Palmer/Walker to appoint Paul Kreul. Motion carried unanimously. (July 11, 2006

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through December 13, 2007; unexpired, two-year term)

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

The City Manager asked Deputy City Manager Howard Ralls and Planning and Economic Development Director Cindy Dittmer to provide brief reports.

Mr. Ralls discussed the County's proposal to raise its transportation impact fees. The County's draft ordinance indicates that it is proposing to raise its fees to a level recommended in a study performed in 2000 by an outside consultant. The County initially adopted its fees at 28% of the figure determined to be the impact cost in 2001. Now they are considering adopting the rates at 100% of the impact.

As an example, the rate for a single-family home is currently \$1,268; however, after the increase, the rate would be \$4,353. County impact fees are collected in 12 municipalities. The exceptions are Palm Bay, Melbourne and Melbourne Village. Palm Bay has dramatically increased its fees. The County's new fees would automatically be collected in other municipalities unless cities elect to opt out.

Mr. Ralls stated that staff's proposal would be to increase Melbourne's fees to a rate that matches the County's. We would retain the amount we currently collect, which is about \$1,200 for a single-family home, and set aside the difference between \$1,200 and \$4,353 for improvements to County roadways in the City. Mr. Ralls elaborated on the provisions in the County ordinance for low income and new home buyers.

Mayor Goode asked if staff would return with an ordinance. Mr. Schluckebier said yes and added that we are not sure how our ordinance would be shaped. Staff will look carefully at the County's ordinance. Additionally, we are required to give 90 days notice under the new law. He concluded by saying that if Melbourne doesn't take action, we will be the sole City that has not updated its fees to a level called for in a report from six years ago.

The City Manager confirmed for Council Member Grace Walker that Council will receive detailed written material on this issue.

Mrs. Dittmer reported that Council's August 8 agenda will contain a transmittal resolution for the next round of major Comprehensive Plan amendments. She said that most relate to annexations that have already occurred or that are about to occur. Mrs. Dittmer displayed several maps and outlined the various properties for Council.

Council Member Kathy Meehan said that the Melbourne Downtown Community Redevelopment Agency Advisory Committee would like to hire a consultant to review the Daily Bread's requested expansion. She asked Council to authorize the hiring of a consultant and asked if that is a four to six month process.

Mrs. Dittmer said it would probably take 30 days to hire a consultant and then another 90 days for the consultant to prepare a report.

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Mrs. Walker asked what a consultant would do. Mrs. Dittmer said that a consultant would study the economic impact of the Daily Bread request on the Downtown Community Redevelopment Area.

Moved by Meehan/Hand to allow staff up to six months to hire a consultant and return to the CRA with information.

Mrs. Hand said she believes this is a good idea and will provide Council with the expertise needed to make a wise decision.

Mrs. Palmer asked if this is something we normally do and if the funding would be paid from the Redevelopment Fund.

The City Manager replied that we aren't normally asked to do this. This is an unusual circumstance and the advisory committee voted unanimously on this recommendation. The members would like to know the definite impact before they take a position. Regarding funding, it is the advisory committee's understanding that since they are requesting the expertise that this will be funded by the Redevelopment Fund.

Mrs. Palmer asked the City Attorney to comment. She added that it is highly unusual and irregular for the City to hire a consultant to look for a reason to not allow expansion of the Daily Bread.

Attorney Gougelman agreed that this is unusual and different; however, he added that it doesn't make it wrong. Rather than having the advisory board render an opinion unsupported by evidence, this seems to be a better approach. The Daily Bread expansion will be a quasi-judicial proceeding; therefore, the decision must be based on evidence. From that standpoint, this direction makes sense. If there is evidence to suggest that this is a delay in the application, then the applicant is free to present that evidence to the City Council.

Mr. LaRusso said that he is hesitant because the City doesn't have the cost and the consultant can't provide a price without specifics.

Mr. Schluckebier said that he believes that the cost will be within the City Manager's purchasing purview of less than \$15,000. If the amount exceeds that, it would have to return to Council for second, subsequent approval. Additionally, staff will have to return to the CRA advisory committee for specifics.

Mr. Contreras said his initial reaction was to pause, but his take is that the advisory committee members are not experts in terms of analyzing the impact. It is his understanding that they are asking for help.

Attorney Gougelman noted that this study would not be to find evidence in favor of or opposed to the soup kitchen. It would be to review the application and come up with factual data.

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Mrs. Palmer said she feels very uneasy about this. She pointed out that the City has not hired a consultant to review the impacts of new high-rise development. It doesn't feel right to hire a consultant for this particular development.

Mr. Contreras said that the City has hired consultants in the past to present data. He cited the consultant hired to review the golf course rates as one example.

Mrs. Walker asked who the consultants will be and what their qualifications are. The City Manager replied that a consultant has not been identified. This item was brought up by the CRA advisory committee at its meeting Friday morning. Nothing has been proposed from staff to the CRA. This was an idea they developed during discussion of the item.

The question was called. The roll call vote was:

Aye: Contreras, LaRusso, Meehan, Hand and Goode

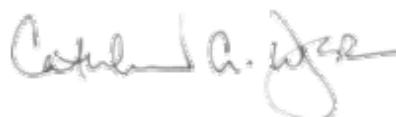
Nay: Walker and Palmer

Motion carried.

24. ADJOURNMENT

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

The meeting adjourned at 7:52 p.m.



City Clerk – 7/20/2006

Approved by Council: _____