

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 10, 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 Darice K.W. Dawson, Florida Tech Chapel, provided 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

Mayor Goode presented Beautification Awards to 1) Our Lady of Lourdes School, 420 East Fee Avenue; accepted by Ms. Renee White, Principal, and 2) Dr. Amy Addington, DDS, 418 East New Haven Avenue.

5. Approval of Minutes – September 14, 2006 Special Meeting, September 19, 2006 Special Meeting and September 19, 2006 Regular Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier referenced the report on the December Council meeting schedule. He noted that in the past Council has canceled the second meeting in December to accommodate the holiday schedule. Additionally, it looks as if we will need to conduct a meeting on December 19 to meet the requirements of the award of contract for the City Hall design/build.

Moved by Goode/Palmer to conduct one regular meeting in December on December 19. Motion carried unanimously.

(Note: A resolution will return to Council providing for a change in the meeting schedule.)

Deputy City Manager Howard Ralls reported to Council that the City has a utility service and annexation agreement with the property owner of a 21-acre parcel located on the west side

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of Dike Road, north of 192 and east of I-95. The agreement was signed in September 2005. Staff recently learned that the property owner applied for annexation into the City of West Melbourne and West Melbourne is proceeding with that process. The item has been before West Melbourne's Planning and Zoning Board and the West Melbourne Council has conducted first reading of the annexation ordinance.

Continuing, Mr. Ralls said that Melbourne staff, during its next meeting with West Melbourne staff, will ask that this item be deferred. He noted that Melbourne has a business interest in this item, which involves the extension of our water and sewer lines. If West Melbourne staff does not agree to defer, Melbourne staff will attend and speak at West Melbourne's October 17 meeting. If the West Melbourne City Council proceeds with annexation, Melbourne staff would like authorization to proceed with litigation against the property owner and West Melbourne.

Moved by Goode/LaRusso to authorize staff to enter into litigation if the negotiation process as explained by Mr. Ralls does not resolve the issue to enforce the contractual arrangement we have with the developer of this property.

Staff confirmed for City Council that this agreement was properly recorded in the Public Records of Brevard County.

Council Member Mark LaRusso asked if the agreement provides for any type of opt-out clause. City Attorney Paul Gougelman replied that he drafted the agreement and he does not believe so. He added that there really isn't a lot of case law regarding these types of agreements; they usually don't get litigated. It is a simple, straightforward agreement. People who are developing property are fairly certain where they want to be located and there aren't many opportunities for something to go sideways.

Mr. LaRusso asked if litigation would be with the owner of the property, West Melbourne or both. Mr. Gougelman said first we would litigate with the property owner on the question of whether or not they complied with the agreement. Second, we would litigate with West Melbourne on the question of whether or not they have interfered with our business relationship. Attorney Gougelman briefly described the mediation process that occurs when one local government sues another.

Mr. LaRusso asked if our utility lines are extended into this area and the City Manager replied yes, for more than 20 years.

The question was called. Motion carried unanimously.

7. Public Comments

None.

8. PRESENTATION TO COUNCIL: A status report from the American Red Cross and information regarding Hurricane Preparedness presented by Jan Weigold Bryant, Executive Director/CEO of the Space Coast Chapter.

Ms. Bryant discussed the programs and training offered by the American Red Cross. She

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asked Council Members to help by talking to their constituents about hurricane preparedness training. Representatives from the Red Cross would like to be invited into communities and neighborhoods to provide a presentation on how to become prepared for hurricanes. She added that they are also seeking volunteers who will represent the diversity of our community.

UNFINISHED BUSINESS

9. ORDINANCE NO. 2006-101 TRANSPORTATION IMPACT FEES, ORDINANCE NO. 2006-99 CONCURRENCY, AND ORDINANCE NO. 2006-100 UTILITIES: Ordinances of the City of Melbourne, relating to Impact Fees, Concurrency, and payment of fees; amending Appendix D, Chapter 10, Article I and Chapter 3; and Chapter 32, Utilities.
- a. Ordinance No. 2006-101 Transportation Impact Fees: (First Reading/Public Hearing) An ordinance of the City of Melbourne, relating to Impact Fees; amending Appendix D, Chapter 10, Article I, Transportation Impact Fees. (Postponed - 8/22/06)
 - b. Ordinance No. 2006-99 Concurrency: (First Reading/Public Hearing) An ordinance of the City of Melbourne, relating to Concurrency; amending Appendix D, Chapter 3, to require payment of a capacity reservation fee and revising the schedule for payment of impact fees. (First Reading - 8/22/2006)
 - c. Ordinance No. 2006-100 Utilities: (First Reading/Public Hearing) An ordinance of the City of Melbourne, amending Chapter 32, Utilities, relating to capacity reservation fees, payment of impact fees, extension fees in newly annexed areas, and limitations on services and extensions. (First Reading - 8/22/2006)

The Mayor pointed out that Ordinance Nos. 2006-99 and 2006-100 have already had first reading. Staff made changes; therefore, they will be heard on first reading again. The City Attorney read each ordinance by its title.

From the agenda report:

Ordinance No. 2006-101: This ordinance would increase Melbourne's transportation impact fees for the various land use categories to be the lower of the fee amounts recently adopted by Brevard County and the City Palm Bay. The ordinance provides for deferring impact fees for qualified, lower income households. It also changes the time of collection from issuance of Certificate of Occupancy (CO) to issuance of the building permit.

Based on Council's direction at the September 14 workshop meeting, provisions have been made for those projects that have been in the review process and will have received a development plan approval prior to October 25, 2006. Those projects will be eligible to pay the current impact fee rates provided that a substantially complete building permit is made by January 23, 2008 and the transportation impact fees are paid by that date. All other projects will have until January 23, 2007 to apply for a building permit and to pay the current rates.

Ordinance No. 2006-99: This ordinance defines a capacity reservation fee to be 10 percent of the applicable water, sewer and transportation impact fees and requires that the fee be paid as a condition of approval of a development plan for the project.

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Payment of the capacity reservation fee will not be required for projects already having certificates of concurrency or a development plan approval except in accordance with any agreement, which may have occurred and would take precedence. All other projects will be subject to paying the capacity reservation fee as specified after the effective date of this ordinance, anticipated to be October 24, 2006.

Ordinance No. 2006-100: This ordinance will require payment of the water and sewer impact fees at the time of building permit issuance. A three-month extension from the October 24, 2006 effective date (of this ordinance) will still allow any applicant for a building permit on or before January 23, 2007 to pay the water and sewer impact fees for that project at time of CO.

Mayor Goode opened the public hearing. There were no comments.

Moved by Hand/Meehan for approval of Ordinance No. 2006-101. Motion carried. Council Members Walker and Palmer voted nay.

Moved by Contreras/LaRusso for approval of Ordinance No. 2006-99. Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2006-100. Motion carried unanimously.

10. ORDINANCE NO. 2006-107 GENERAL EMPLOYEES' PENSION PLAN: (Second Reading) An ordinance amending Chapter 23 of the City Code, Retirement and Pensions, Article VII, General Employees' and Special Risk Class Employees' Pension Plan, amending the definition of "Senior Management Employee" to include City Attorney. (First Reading - 9/19/06)

Attorney Gougelman read Ordinance No. 2006-107 by title. There were no comments during the public hearing.

Moved by Walker/Hand for approval of Ordinance No. 2006-107. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

11. CONSENT AGENDA:

The Mayor reported that Council Member Richard Contreras asked for Item "d" to be removed from the consent agenda.

Moved by Palmer/Meehan for approval of the consent agenda, Items "a", "b", "c", "e" and "f" as recommended. Motion carried unanimously.

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- a. Annual purchase of 40 American Darling B-84-B fire hydrants, Ferguson Waterworks, Orlando, FL - \$1,061.36/each, estimated annual cost of \$42,454.40.
- b. Lien Rescission CE-05-108: Approval of request for a lien reduction from \$6,700 to \$670 if paid in full within thirty days. (Jose Landman - 978/982 Aurora Road)
- c. Lien Rescission CE-05-066: Approval of request for a lien reduction from \$12,050 to \$2,400 if paid in full within thirty days. (Douglas Hoyt, Boca Bargoons of Melbourne, Inc. – 2800 North Harbor City Boulevard)
- d. Lien Rescission CE-00-118: Approval of request for a partial release of lien (for new owner on subject property) in the amount of \$8,245.70 with the lien amount to remain in full in the name of the previous owner. (Marc A. Accilien & Sylvie T. Pierre – 2521 Pond Street)

Note : See Item #12 for action on Item “d.”

- e. Resolution No. 2007: A resolution authorizing the City Manager to submit an application for a 50:50 matching grant to the Department of Environmental Protection for a Coastal Partnership Initiative Grant for improvements to the entrance area of the Eau Gallie Pier and authorization for the City Manager to execute the documents. Grant funds requested are \$50,000.
- f. Request for exemption from impact fees in the amount of \$10,601.57 for the Brevard Neighborhood Development Coalition’s Outreach center.

12. ITEMS REMOVED FROM THE CONSENT AGENDA

- d. Lien Rescission CE-00-118: Approval of request for a partial release of lien (for new owner on subject property) in the amount of \$8,245.70 with the lien amount to remain in full in the name of the previous owner. (Marc A. Accilien & Sylvie T. Pierre – 2521 Pond Street)

Mr. Contreras asked why this lien did not appear at the time of the tax sale.

Code Enforcement Administrator Dan Porsi confirmed that the new owner (Leonise Dorlus) bought this house at a tax sale. According to the Code Board Attorney, Bob Wattwood, full due diligence is not done prior to a tax sale. During the sale other liens were paid; however, the new owners were not aware of this lien. They asked for the lien to be released. The Code Board would like to release the new owner from the lien while retaining the ability to recover from the original owners (Alond Pierre c/o Gracian Pierre).

Attorney Gougelman added that usually during a tax sale a bid is taken and at that point, the people bidding on the property are not necessarily aware of any municipal liens against the property. Most people think that a tax sale wipes out mortgages, etc., but it does not.

Mr. Porsi confirmed for Mayor Goode that the lien was properly recorded in the Public Records of Brevard County.

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Continuing, Mr. Gougelman said that when someone bids at a tax sale, they don't do a full-blown search on the property. A tax sale preserves utility easements and certain governmental liens. The new owner who paid good money at a tax sale thought she was taking clear title. Since she wasn't involved in the violation, she would like the lien released on this property. The lien would stay in effect as to the violator and any other properties the violator has in Brevard County.

Mr. Contreras commented that the original property owner didn't pay to begin with; therefore, he believes that there is no value in holding the original owner liable for the lien. He added that this is a case of "let the buyer beware." The lien should remain with the property and not be reduced to zero.

Moved by Contreras/Palmer to deny rescinding the lien to zero. (This motion later withdrawn.)

Attorney Gougelman reminded Council that there is a procedure, which was adopted by Council in 2004. Council may conduct a hearing on the recommended order. A hearing date will be set and the violator and person affected will have an opportunity to appear.

Vice Mayor Hand asked if this lien can be moved to other properties owned by the violator and Mr. Porsi replied yes.

Council Member Grace Walker asked if the lien should be reduced or canceled if the violations have been corrected. Mr. Porsi said in this case the home was in disrepair and the house had to be demolished. By demolishing the house, the property was brought into compliance, but not before a fine was instituted. The new owners thought they were buying a vacant piece of property with no liens.

A brief discussion followed regarding the difference between this item ("d") and Items "b" and "c" on the consent agenda. Council Member Cheryl Palmer said Item "d" involves a previous owner and a new owner. In this item, someone was unable to repair the home and finally unable to keep ownership of the property. She added that she is assuming these things happened because of poverty. Someone snapped up the property at a reduced rate and rather than having her take responsibility, we are trying to have the debt follow someone who is so impoverished that he actually lost the property.

Discussion continued. Mr. Porsi confirmed that the new owner paid past lot mowing liens, another Code lien and the City demolition of a structure from the tax deed sale. She was not aware of this lien.

The maker/seconded withdrew the motion in lieu of the process that needs to be followed for a hearing before Council.

Mrs. Palmer said that the fact the new owner took care of the liens she knew about changes her perspective.

A brief discussion followed regarding the foreclosure process.

Moved by Hand/Goode to approve the lien rescission. The roll call vote was:

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Aye: Meehan and Hand

Nay: Contreras, LaRusso, Walker, Palmer and Goode

Motion failed.

Moved by Contreras/LaRusso to follow due process and conduct a hearing. Motion carried unanimously.

13. FINAL PLAT APPROVAL (SD-2005-09) KENNEDY SQUARE SUBDIVISION: (Public Hearing) A request for final plat approval to allow a 10-lot townhouse development at a density of 11 units per acre on a 0.92±-acre parcel zoned R-2 (11) (One-, Two-, and Multiple-Family Dwelling Medium Density with a cap of 11 units per acre), located on the north side of Masterson Street, east of Kennedy Street, and west of Southland Avenue. (Owner - Habitat for Humanity) (Applicant/Representative - Joe Gassman, President & CEO, Habitat for Humanity) (P&Z Board - 9/07/06)

Planning & Economic Development Director Cindy Dittmer reviewed the agenda report and located the property on the map. The Planning and Zoning Board unanimously approved SD-2005-09, as depicted on a two-sheet plan prepared by Mott Land Surveying, with a signed and sealed date of March 3, 2006, 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 recordation of the final plat.
- 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 the public hearing was opened and closed with no comments.

Moved by LaRusso/Meehan for approval based upon the findings and conditions outlined in the agenda report. Motion carried unanimously.

14. ORDINANCE NO. 2006-108 (AR-2006-206), ORDINANCE NO. 2006-109 (CPA-2006-28), AND ORDINANCE NO. 2006-110 (Z-2006-1086) HANNA HOMES (NORTHGATE): Ordinances providing for annexation of a 2.84-acre parcel and 0.22 acres of right-of-way; and a Comprehensive Plan Amendment and zoning designation for 2.84 acres, located north of Aurora Road, west of Wickham Road, and south of the Northgate Street right-of-

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way. (Owner/Applicant – Hanna Homes Construction, Inc.) (Representatives – Scott Glaubitz, P.E. & Ana Saunders, P.E.) (P&Z Board – 9/07/06)

- a. Ordinance No. 2006-108/AR-2006-206: (First Reading/Public Hearing) An ordinance providing for annexation of a 2.84-acre parcel and 0.22 acres of right-of-way.
- b. Ordinance No. 2006-109/CPA-2006-28: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Low Density Residential on a 2.84-acre parcel.
- c. Ordinance No. 2006-110/Z-2006-1086: (First Reading/Public Hearing) An ordinance providing for a designation of R-2 (6) (One-, Two-, and Multiple Family Dwelling Medium Density with a cap of six units per acre) zoning on a 2.84-acre parcel.

Attorney Gougelman read Ordinance Nos. 2006-108, 2006-109 and 2006-110 by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of these requests. After the Planning and Zoning Board meeting, a petition was submitted against the requested Comprehensive Plan amendment and the zoning from surrounding property owners. The City Code provides that if a petition signed by owners of 20% of the area within 500 feet is submitted, it shall require a 6/7 vote by City Council at second reading. The petition represents the owners of 20.12% of the surrounding property.

There were no disclosures by Council. Mayor Goode opened the public hearing.

Glenn Evers, 3250 Aurora Road, said he is opposed to the requested zoning because multi-family is not conducive with the area. This area has one to three acres per property and the proposed multi-family development will lower their property values. Mr. Evers added that the residents do not know what is planned for this property – other than “multi-family.” The current zoning allows four homes per acre and the residents would not balk at that. And, they would like to know if the plan calls for apartments or Section 8 subsidized housing. Mr. Evers asked Council to look at this request closely and remember that the area residents would like to protect their lifestyle and investment.

Cynthia Evers, 3250 Aurora Road, said that she shares the same concerns as Glenn Evers. She noted that the residents are trying to preserve their lifestyle. They are concerned about what is proposed for the site. The site is behind an old shopping center that is in bankruptcy and partially abandoned. This has lead the residents to believe that if condominiums or multi-family dwellings are proposed, they won't be upper scale.

Gene McCoy, 1805 Evers Road, said he is located just under 75' from the property. He apologized for not attending the Planning and Zoning Board meeting. Apparently the tax rolls still list the previous owner of the property; therefore, his notice was mailed to Alabama.

Mr. McCoy said that during the past 50 years he has owned various properties that needed a change in zoning or a variance. The first step has always been to knock on neighbors' doors and provide a briefing. Mr. McCoy said he is concerned that these three ordinances do not include a site plan. Additionally, he described a scenario where the applicant/developer ends up selling and the project is never completed as promised. Mr.

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McCoy asked the City Council to encourage neighborhood communication. He concluded by saying that he can think of three small adjustments that would make this project acceptable to him.

Mrs. Palmer asked Mr. McCoy about the adjustments. Mr. McCoy said that if he puts concessions on the table, then negotiations have started. He asked Council if it wishes to negotiate for the developer. Also, he said that he should consult with his neighbors prior to making any concessions.

Croy Goins, 2005 Palomino Road, stated that the area has been experiencing a steady erosion of the rural quality of life. He is concerned about noise and security issues and added that a dense, multi-family development does not fit the neighborhood.

Mr. Goins confirmed for Mrs. Meehan that he received a notice about the Planning and Zoning Board meeting. Mrs. Meehan pointed out that no one attended the Planning and Zoning Board meeting from the neighborhood. Mr. Goins said often he is unable to get off work. He did not realize what was happening until he heard from Glenn Evers.

Mr. LaRusso asked if the applicant has contacted any neighbors. Mr. Goins said not that he is aware of.

Randolph Schmitz, 1800 Evers Road, said that he has a 3.7-acre horse farm that would be impacted the most by this development. Although he is in a rural community, he still has problems with young people, mischief, fireworks and pranks. He said that a multi-family development on this property would make things worse. Mr. Schmitz pleaded with Council not to affect this area.

Ana Saunders, BSE Consultants, Inc., representing the applicant, reported that they have followed all of the proper procedures with regard to notification and application. She said that the issues being raised are site plan related issues and it is too early in the process to have a full set of engineering plans to share with the neighborhood. Ms. Saunders said that staff believes this is a good project. They plan on developing a townhouse project with each unit having its own garage. This developer does not want to build an ill suited project. They will comply with all Code requirements and they would like approval so they can begin developing a site plan. Ms. Saunders concluded by saying they want to be good neighbors, too, and do not want to disrupt anyone's way of life.

In response to Mrs. Meehan, Ms. Saunders said that Hanna Homes has developed a small-scale project, similar to what is proposed on this site, in the City of West Melbourne near Palm Bay and Minton Roads.

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

Mr. Contreras asked why this development is not proposing zoning that is similar to the surrounding area. Mrs. Dittmer said that this property is not accessed from the west – access is from Wickham Road. The property is located behind a commercial facility and it is between vacant property and property zoned R-2 with a cap of six units per acre. Rural property is located to the west; however, residents won't traverse through the rural neighborhood to reach the subject property.

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Mrs. Palmer asked if the applicant, absent a zoning and Comprehensive Plan change, would still want to annex into the City of Melbourne. Ms. Saunders said she would have to ask her client. Ms. Saunders added that she was not notified that there were any issues with the surrounding residents nor was she notified about a petition. She pointed out that there was no opposition at the Planning and Zoning Board meeting.

Mr. Contreras said he is inclined to postpone this item to allow Ms. Saunders time to speak to her client and to work with the neighbors. Mayor Goode agreed and said the applicant had better get into the neighborhood and do some work.

Moved by Contreras/LaRusso to postpone this item for two weeks (until the October 24 meeting). Motion carried unanimously.

Recessed: 7:56 p.m.

Reconvened: 8:03 p.m.

15. ORDINANCE NO. 2006-111 (Z-2006-1088) MJ DEVELOPMENTS, LLC: (First Reading/Public Hearing) An ordinance changing the zoning from C-P (Commercial Parkway) to M-1 (Light Industrial) on a 2.68±-acre parcel, located south of Sarno Road, east of the State Street right-of-way, and west of Wickham Road. (Owners - Michael Scott & Jonathan Lowman) (Applicant - MJ Developments, LLC) (Representative - Michael Scott) (P&Z Board - 9/21/06)

The City Attorney read the ordinance by title and Mrs. Dittmer briefed Council. The Planning and Zoning Board voted six to one to recommend approval. Mrs. Palmer disclosed that she received a call from Daryl Davis who believes that the zoning should remain commercial parkway.

The Mayor opened the public hearing.

Michael Scott, 2955 Pineda Causeway, reported that he is one of the owners of the property. He stated that they wish to rezone because M-1 zoning would be more beneficial. They are in the process of a feasibility study and are looking at a mixed-use development or flex warehouse space.

Mr. Scott said they are concerned about the requirement for a concrete wall. Their preference would be to provide a wood fence. Wood fences surround the adjacent senior center and apartment complexes.

Mr. LaRusso said that the existing wood fences may not adequately displace noise, dust and dirt. The Mayor added that a concrete wall may be required because of the adjacent apartments.

Mr. Scott said that the wall was requested because of the noise. He explained that they would not be facing the apartment complex. Additionally, they plan on placing their drainage between their property and the adjacent property.

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Mrs. Palmer asked if flex warehouse space would include small individual shops and business, light industrial and machine shops or shops that produce noise.

Mr. Scott replied yes and Mrs. Palmer said that is the reason for requiring the wall. Mr. Scott said that flex space would provide larger units for plumbers, as an example, to store their equipment. Mrs. Palmer asked if light industrial is needed to build storage space and Mr. Scott replied yes. Mrs. Palmer stated that there is a big difference between storage space and small businesses of a light industrial nature. Mr. Scott commented that they don't plan on having those types of uses, but the zoning would allow for that.

Mrs. Meehan asked if the facility would have hours of operation. Mr. Scott said yes, they plan on having a gate with key access.

Mr. Contreras pointed out that the zoning allows for other uses; that is the reason for the wall. However, the applicant is indicating that he doesn't plan on having those types of uses. Attorney Gougelman said that the applicant is free to volunteer concessions, such as hours of operation or restrictions on use of the property. That would be enforceable through a developer's agreement and conditions attached to the zoning ordinance.

Mr. Contreras asked Mr. Scott if he would be willing to sign a developer's agreement indicating that this would be a storage complex. Mr. Scott said he would be willing to say that there would be no automotive uses on the property.

In response to Mrs. Palmer, Mrs. Dittmer said that light industrial could accommodate more intense automotive uses, light manufacturing, electronic manufacturing, storage, outdoor storage of building materials, etc. Commercial Parkway has the largest setbacks and that is why staff proposed the conditions, including the masonry wall, outlined in the agenda package.

Continuing, Mrs. Dittmer said that staff discussed its concerns with Mr. Scott along the way. The four conditions in the ordinance are intended to force a site design on the property that would not intrude on residential. Mrs. Dittmer reviewed each condition.

Mrs. Palmer said she would support an additional condition limiting the hours of operation.

Moved by Palmer/Contreras to approve Ordinance No. 2006-111 subject to the conditions outlined plus an additional condition to limit the hours of operation.

The maker/seconded agreed that staff and the owner can work on the language of the new condition prior to second reading.

The question was called. Motion carried unanimously.

16. COUNCIL ACTION RE: Establishing an appeal process for final decisions of the Planning & Zoning Board (P&Z Board).

Attorney Gougelman briefed Council. The following is an excerpt from the agenda report:

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The Planning and Economic Development Department received a request for appeal to City Council of a final decision by the Planning and Zoning Board. This is the first appeal that is to be considered by Council since the Code was amended in 2005 to allow the Planning and Zoning Board final approval on smaller site plans.

The City Attorney has recommended procedures. Because the process of hearing an appeal is a quasi-judicial action, appeals should be handled in much the same manner as a court would handle them.

Recommended procedures include:

1) The Code requires that the City Council must first make a determination that the appeal has been filed within 30 days of the application or petition being appealed. The Code should be modified to require the filing of an appeal with the City Clerk with a copy to the Planning and Zoning Board secretary within 30 days of the “rendition” of the Planning and Zoning Board’s decision. Based on Florida court appellate procedures, a final order of the Planning and Zoning Board is “rendered” when a written order, signed by the Board Chairman, is filed in the official records of the Board’s secretary. It is also recommended that the date of “rendition” of a final order of the Planning and Zoning Board, which is the date the signed, written order is filed in the records of the Board secretary, should be recorded right on the final order. Likewise, when an appellant files a notice of appeal, the date of filing should be date stamped right on the notice so that compliance with the 30 day filing requirement can be quickly and easily ascertained.

2) The first step in review of an appeal by the City Council will be to determine whether the notice of appeal has been filed within 30 days of “rendition” of the Planning and Zoning Board’s final order. This is a mechanical requirement, which will require the Council to compare the date of rendition of the Planning and Zoning Board’s final order with the date of filing of the notice of appeal. If the two documents are filed within 30 days of each other, the appeal was timely filed. If the two documents were not filed within 30 days of each other, the appeal was not timely filed. The City Council should then issue an order dismissing the appeal, and no further action is required. (A court would take this action.) This is not a discretionary decision. If the notice of appeal was not timely filed within 30 days of the date of rendition of the Planning and Zoning Board’s final order, then the City Council is legally without jurisdiction to hear the appeal.

3) At some point after the notice of appeal is filed and the matter is considered by the City Council, the appellant should be required to have a court stenographer prepare a verbatim transcript of the Planning and Zoning Board hearing at which the final order being appealed was issued. This should be at the expense of the appellant, and even if the appellant does not have a court stenographer at the Planning and Zoning Board hearing, a stenographer can prepare a transcript directly from the tape recording of the Planning and Zoning Board hearing at City Hall.

There are two reasons why this should be required. First, if the City Council does not have a verbatim transcript of the Planning and Zoning Board hearing, it may be difficult to ascertain specifically the basis of the Planning and Zoning Board’s decision. Second, if the appellant is displeased with the City Council’s decision of which to seek court review, a court of law will likely look for a transcript of everything that has happened.

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4) When the City Council hears the appeal, the transcript should have been previously made available to the Council. The scope of the Council's review is not to rehear the entire matter. It is to determine whether the Planning and Zoning Board made a decision inconsistent with the law or the City Code. If the Planning and Zoning Board's decision is inconsistent with the law or the Code, then the City Council may reverse the decision and return the matter to the Planning and Zoning Board for further action consistent with the City Council's action. If the Planning and Zoning Board made a decision consistent with the law and the Code, but maybe not the "best" or more desirable decision, the City Council should affirm the Board's decision. This procedure is consistent with the manner in which a court would treat this type of situation.

Moved by LaRusso/Meehan to approve the procedures for an appeal of a final decision of the Planning and Zoning Board as outlined. Motion carried unanimously.

Moved by Goode/Walker to convene as the Olde Eau Gallie Riverfront Community Redevelopment Agency for the following items. Motion carried unanimously.

17. COUNCIL ACTION RE: Funding requests for the Olde Eau Gallie Riverfront Community Redevelopment Area.
- a. Approval of funding assistance to Artworks in the amount of \$5,000 to be paid from the Reserve for Future Projects budget.
 - b. Approval of funding assistance to the Olde Eau Gallie Merchants Association in the amount of \$2,000 for the weekly farmers market in Downtown Eau Gallie to be paid from the Reserve for Future Projects budget.

Moved by Hand/LaRusso to approve the funding outlined in Item "a." Motion carried unanimously.

Moved by LaRusso/Hand to provide the requested funding outlined in Item "b" plus an additional \$1,000 to be provided from General Fund Contingency.

Mr. LaRusso stated that the farmer's market is the first of its kind in Brevard County. The Downtown Melbourne area currently receives funding for its Friday Fest events and the annual Spring Art Festival. Mayor Goode clarified that Downtown Melbourne had a farmer's market about 25 years ago.

Mrs. Palmer said that the Downtown Melbourne events receive funding in the form of services provided by the City. She recommended that \$1,000 in services be provided to the farmer's market.

Mr. LaRusso said perhaps that can be considered in the future; however, at this time he would like to provide an additional \$1,000 in funding.

The question was called. Motion carried unanimously.

Without objection, the City Council reconvened.

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By consensus, the City Council approved the additional \$1,000 from the General Fund.

The City Manager noted that this will be included in the first quarter budget amendment.

18. COUNCIL ACTION RE: Acceptance of the City of Melbourne Fire Department Deployment Study.

From the agenda report: On February 14, 2006 the City Council authorized award of a contract to conduct a fire services deployment study, provided by Emergency Services Consulting, Inc. (ESCI). The objective was to gather information regarding how service levels have been affected due to annexation of new areas as well as increased development in various areas of the City and to provide input to improve service. Three strategies have been recommended by ESCI for both immediate and future implementation and recommendations have been made to improve service delivery to citizens.

Strategy A: (1-3 year plan) City stations are in good locations. Maintain automatic aid agreements with the County, move the engine crew from the Airport and use the staffing to put a second ladder truck in service at Station 76 (Croton and Lake Washington Roads), and add a second Battalion Chief per shift. Staff recommends placing the truck at Station 71 (Eau Gallie and Harbor City Boulevards) and save money on the renovation of Station 76.

Strategy B: (3-20 year plan) Strategy A, plus add a station near John Rodes Boulevard and Ellis Road, add a third truck to the John Rodes Station, possibly add a station on the extreme southwest if the City expands that far. Utilize County stations if the stations fall into annexed areas.

Strategy C: Same as Strategy B but with alternate sites for stations if the City and County cannot come to an agreement regarding the use of County fire station sites.

The recommendation is for Council to accept the study. The Fire Department will incorporate the objectives of strategy A in the budget process for implementation within several years. Following additional review, the John Rodes station may be placed in the budget as early as FY 2011. Any additional station locations will be based on the expansion of City limits and the need to provide services to the newly annexed areas.

At the request of the City Manager, Fire Chief Paul Forsberg elaborated on Strategy A. Chief Forsberg confirmed for the Mayor that a "crash crew" would remain at the Airport. FAA regulations would not be jeopardized.

Moved by Walker/Hand to accept the Fire Department Deployment Study and implementation of objectives as outlined. Motion carried unanimously.

19. COUNCIL ACTION RE: Pre-bid final approval of the new City Hall conceptual plans.

City Engineer Jenni Lamb briefed Council. This is a request for pre-approval of the City's Request for Qualifications (RFQ) and the design-build process for the new City Hall project.

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Staff and BRPH have made every attempt to meet space needs while being budget conscious. The conceptual plan provides 155+ parking spaces on-site and a four-story building. The four-story building will be approximately 45,000 square feet and structurally designed to accommodate a future fifth floor. The fifth floor option will allow for the possibility to expand City Hall on-site. The conceptual site plan includes an area where a parking garage could be located. The parking garage will be considered an alternate pending cost proposals and budget.

The City will contract with a single firm to provide both design and construction services to complete the project. The design-build contract will be awarded through a competitive proposal selection process. The selection committee will short-list three or four design-build firms based on their responses to the RFQ. The short-listed firms will be invited to make presentations to the selection committee to describe their approach to the project and demonstrate their understanding of the project scope. At the time of the presentations, the short-listed firms will provide a guaranteed maximum price and a guaranteed completion date. The successful design-build firm will be chosen based on a combination of guaranteed maximum price and the rankings of the selection committee.

An RFQ is scheduled to be advertised on October 17, 2006 pending approval by Council. The selection committee will make a recommendation of contract award at the December 19, 2006 Council Meeting.

An RFQ for design-build requires a budget to be listed. The City estimates the cost to be approximately \$9 million for a 45,000 square foot building. The City has the opportunity to increase the amount previously borrowed under Resolution No. 1960 approved on December 13, 2005. To utilize this small issue or discount financing offered by Public Financial Management, N.A., Bank of America, the City must increase the amount borrowed prior to December 30, 2006.

Ms. Lamb noted that in reviewing the industry standard, construction is at about \$200 per square foot. That means we would have to borrow additional money as described in the report by December 30.

Mrs. Walker asked how much we would borrow. Ms. Lamb said she believes between \$6.75 and \$10 million. The City Manager added that we expect the project to be less than \$10 million; however, it depends on the option Council selects. There is a fifth floor option, parking facility option, etc.

In response to Mrs. Walker, Ms. Lamb said that the interest rate is based off of prime and is a very competitive rate.

Mayor Goode asked about the bidding environment. Ms. Lamb said staff believes there will be competition; the market is much more favorable this time.

Ms. Lamb explained the construction process for Mrs. Meehan. She confirmed that part of the review process will include Planning and Zoning and City Council.

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Mrs. Palmer asked if postponing some capital building projects would be in order while the softening market brings down costs. Ms. Lamb noted that with a design/build process, there is a guaranteed maximum price; the City will be able to negotiate.

Mrs. Palmer commented that the County is not continuing with its park projects because of skyrocketing constructions costs. She asked if there is justification to wait. Mr. Schluckebier replied that we still have the same space issues that we had two to five years ago. He stated that there will be willing bidders in the \$150 to \$200 range and, everything else being equal, we don't think the market will take a precipitous dip in the next 12 to 36 months.

Moved by Meehan/Hand to authorize staff to proceed with the City Hall Design-Build RFQ as outlined in the agenda report; to provide a budget to be included in the RFQ; and that staff return prior to or concurrently with appropriate financing sources. Motion carried unanimously.

20. COUNCIL ACTION RE: Confirmation of appointment of fifth member to the Police Officers' Retirement Trust Fund Board of Trustees.

Moved by Meehan/Palmer to confirm the appointment of Janice Hill. Motion carried unanimously. (Term: 11/1/2006 - 10/31/2008)

21. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole, 805 East Palmetto Avenue, thanked Council for not eliminating the public's ability to speak under "petitions, remonstrances and communications."

Council Member Contreras briefly discussed the September 13 Golf Course Advisory Board minutes. At that meeting the board discussed a resident whose house backs up to the Melbourne Golf Course (2120 Country Club Road). The resident has been complaining about errant golf balls. She also removed City trees and/or vegetation, which provided a barrier. The board decided that no further action could be taken. Members also agreed that golfers are responsible for errant golf balls – not the golf course.

A brief discussion followed.

Mr. Contreras asked for additional information about the emergency operations pay policy.

The City Manager said that in the past the City has not had a firm policy. We have four employee groups who respond – or don't respond – on days where we have a declared emergency. The police and fire groups have fairly well defined labor agreements. There are no issues with those two groups. This discussion relates to our essential and non-essential general and LIU personnel.

After Hurricane Wilma, we experienced vocal displeasure from our blue-collar workers. It was their opinion that it was not fair to receive a regular day's pay for coming in during a hurricane while non-essential personnel received a regular day's pay for staying home. And, if you look at that, it is not fair and reasonable. We indicated that we would try to do something more fair between contracts. As the storm approached this year we decided that non-essential personnel would need to use leave. We provided notice, but not everyone

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understood the policy. While the LIU group was satisfied that they were being treated in accordance with their contract, it agitated a new group of employees who said they should not suffer the loss of their leave. Their sense is that they should be compensated to stay home if it is the City's decision to close the facilities.

Continuing, Mr. Schluckebier said that Deputy City Manager Amy Elliott and her staff have been formulating a pay policy. When reviewing this issue, they discovered that other cities compensated their employees with no requirement to use leave when they closed the government facility. We think we will end up with a policy that mirrors everyone else's; however, we need to negotiate with the LIU group. Although their contract does not specify, they should be treated better in that sense.

For non-essential employees, we will probably pay the first or second day off and then require the use of leave. If at some point we have multiple storms, we will still be required to get the work done. It is ridiculous to pay people to sit at home while paying others overtime to come in and work. The City Manager concluded by saying that staff is prepared to answer questions on the specific cost of incentives.

Mr. Contreras asked the dollar value for non-essential employees had they been paid. Deputy City Manager Amy Elliott said she took a typical payroll and assumed a payroll cost of about \$67,000 for non-essential employees. For one day, she used gross wages and an estimate for retirement and social security.

Mr. Contreras stated that a measure of goodwill has been lost relative to the inconsistency of the emergency pay policy. Some folks he spoke with didn't know that the doors were going to be locked and there weren't any make-up opportunities.

Moved by Contreras/Palmer based on the estimation provided to compensate employees for that one day of pay (August 30) and not charge it against their leave.

Mayor Goode pointed out that a new divide has just been created. Council is proposing to pay employees regular wages for staying home while employees who were brought in received regular wages. He cautioned against negotiating employee wages.

Moved by Contreras/Palmer to amend the motion by providing additional compensation for those employees who did come in to work.

Mayor Goode recommended that this be postponed to allow staff time to look at the real costs.

Mrs. Palmer said she hesitates to get involved in these situations; however, as the champion of the working class, she understands the difficulties involved in losing a day's pay or a leave day. Many people have their leave planned months in advance.

Mayor Goode noted that this item would appear on the next agenda for action. There were no objections from Council.

22. ADJOURNMENT

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

The meeting adjourned at 9:21 p.m.



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Approved by Council: _____