

CITY OF MELBOURNE, FLORIDA  
MINUTES – SPECIAL WORKSHOP MEETING BEFORE CITY COUNCIL  
NOVEMBER 27, 2006



1. A special meeting of the City Council was held at Front Street Civic Center, 2210 Front Street, and was called to order at 6:30 p.m. by Mayor Harry C. Goode, Jr.

2. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Mark LaRusso	Vice Mayor, District 2
	Richard Contreras	Council Member, District 1
	Kathy Meehan	Council Member, District 3
	John Thomas	Council Member, District 4
	Cheryl Palmer	Council Member, District 5 (arrived 6:38 p.m.)
	Joanne Corby	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Deputy City Manager
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

3. PRESENTATION AND REVIEW BY STAFF ON THE FOLLOWING:

**a. Status on discussion of Utility Agreement update with the City of West Melbourne**

City Manager Jack Schluckebier stated that Deputy City Manager Howard Ralls has been instrumental in the discussions with West Melbourne. He asked Mr. Ralls to provide an update. Mr. Ralls briefed Council. The following is an excerpt from the agenda report:

Discussions between Melbourne and West Melbourne staff regarding the water utility agreement have been underway for the past few months. Requests for extension in areas now served by Melbourne in the I-95/Ellis Road and I-95/U.S. 192 areas precipitated these discussions.

In October, the City Attorney drafted a revised and updated agreement, which was delivered to West Melbourne staff for review. The revised agreement covers a number of concerns that are not addressed by the existing agreement. One major concern is the rapid development that has been occurring in West Melbourne during the last five years. The city's population increased by 50% while its water usage increased by nearly 100%. Melbourne staff is concerned that it has no projections of West Melbourne's growth or future demands, although the current agreement requires us to sell them all the water they may require. This is an infrastructure planning issue for Melbourne.

West Melbourne has declined to specify its future demands in any meaningful way and has recently indicated it may purchase water from Palm Bay. West

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Melbourne staff did point out that its recent growth came during a building boom and that future growth may be much more constrained.

There is a general feeling that applying Melbourne's recently adopted concurrency standards to West Melbourne's development projects may solve this problem. As Melbourne's customer, West Melbourne would have to be the water concurrency applicant for any new development project within its boundaries. The concurrency approval process includes payment of a capacity reservation fee.

Another concern is the increase in the number of metered interconnects required by West Melbourne and the manner in which they have been used. The number increased from four meter locations about 15 years ago to 12 meter locations today. Many of the new meters are what we have termed "meters of convenience". These are meters that are located on Melbourne's transmission mains and serve only a single project or small group of projects in West Melbourne – they are different from what we have termed "master meters", which are meters that provide water to West Melbourne's water distribution system. Melbourne staff believes that "meters of convenience" allow West Melbourne to take advantage of Melbourne's water transmission line investment and to offer water service to new development projects at no cost to West Melbourne. This in turn has cut off Melbourne's future growth and does not allow recovery of the City's investment for these assets.

Melbourne stopped approving new meter locations several years ago. Melbourne believes 12 meter locations are adequate for West Melbourne to serve its population and that new development should be served by upgrading or extending the West Melbourne distribution system, not by tapping the nearest Melbourne line. Melbourne staff and West Melbourne staff are making progress on these issues. It is likely that a resolution of the boundary issues will also lead to an amicable settlement.

Melbourne wishes to define the key meters through which additional water can be provided to the West Melbourne system for new development. Melbourne also wishes to restrict "meters of convenience" and expansions from them, and to require hydraulic computer "modeling" by West Melbourne before further significant expansion. As an example, despite having a nearly 2.0 MGD water usage, West Melbourne has no water storage facilities or pressure boosting pumps and relies on Melbourne's system to an inordinate degree.

Staff will keep Council informed; however, we don't anticipate major progress on this matter until boundary adjustments are made.

Mr. Ralls added that West Melbourne has undertaken an effort to develop a computer model of their distribution system. West Melbourne will use the information to determine what they need to do on their side of the meter.

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**b. Status on Potential Boundary Agreement Adjustments/Advance Discussion with West Melbourne**

The following is an excerpt from the agenda report:

This is regarding the Municipal Service Area (MSA) near the intersection of I-95 and U.S. 192 that was to be the subject of an interlocal service boundary agreement. Council approved Resolution No. 1993, which defines the geographic area to which Melbourne proposes to provide municipal services. Recent legislation (SB 1194) enables municipalities to annex municipal service areas contingent upon approval of an agreement with the county.

The City's resolution was submitted to Brevard County. The County subsequently invited West Melbourne to participate in the negotiations and West Melbourne indicated its interest in participating by a resolution.

The subject area is at the intersection of the newly four-laned U.S. 192 and I-95, and there has been a great deal of recent contact by owners/developers interested in water and sewer service. Only Melbourne and West Melbourne are in a good position to provide these services. Palm Bay may become involved if the two cities cannot meet the areas' needs and may serve the area subject to a 2001 settlement agreement; however, its utility capacity is limited.

Melbourne and West Melbourne staff met several times in an effort to define the reasonable municipal service areas/future annexation areas for each city. West Melbourne has historically viewed its future growth as being westward into this area. On the other hand, Melbourne has water distribution lines in the area and is providing one of the key municipal services for development.

These discussions have uncovered two problems associated with the MSA defined by the City in its resolution.

1. Hesse Property – one parcel was included in the MSA because its owner has a utility and pre-annexation agreement with Melbourne. After two months of discussion with West Melbourne, we learned that the owner applied for annexation into West Melbourne and has already gone through the first reading of an annexation ordinance. This is the Brookfield Village ALF project on Dike Road.
2. Ferrell Properties – another grouping of parcels totaling about 250 acres located on the south side of U.S. 192 was included in the MSA after extensive discussions with the developer about utilities and annexation. Melbourne and West Melbourne staff learned that the owner of most of these parcels south of U.S. 192 signed a pre-annexation agreement with West Melbourne in 1994. This is a large

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part of the City's proposed MSA concerning unincorporated areas that lie south of U.S. 192 and may preclude any of Melbourne's interests there, at least east of Simon Road.

We expect West Melbourne to honor our Brookfield Village/Hesse property pre-annexation and would expect to do the same with the Ferrell properties having a pre-annexation arrangement with West Melbourne.

These discussions have led to a compromise proposal for designation of the MSA for each city. Basically, Melbourne could redefine its MSA interests to just the area north of U.S. 192 and west of I-95. West Melbourne could define an MSA for the remaining quadrants. For that arrangement, West Melbourne may agree to de-annex three parcels – the Thornberg property, the Welchwood property and the five-acre City of Melbourne property – provided the private owners also agree and are assured of water and sewer availability.

In light of the recent disclosures by the property group south of U.S. 192, it is advisable to carefully consider the "squaring up" proposal by West Melbourne. The alternative may be a prolonged and highly conflicted inter-local dispute. This proposal may also help re-frame water utility agreement amendments. West Melbourne has indicated no objection to Melbourne's providing water service west of I-95 as a retail franchised area.

Since only Melbourne and West Melbourne have interests in this area and are working towards a mutually acceptable arrangement, Melbourne has asked Brevard County to delay negotiation meetings as they may not be necessary.

Mr. Schluckebier introduced the item and briefly discussed the issues.

Mr. Ralls reviewed the proposed municipal service area map, which was part of our interlocal service area boundary agreement resolution. Next, Mr. Ralls displayed the potential municipal service area map – known as the "squaring up" map. This map shows properties whose owners we have talked to and would involve utility compromises. West Melbourne would have to de-annex property. This area (north of 192) is approximately 633 acres.

Mr. Ralls noted the location of Melbourne's 20" waterline along U. S. 192 west to Brandywine. The City of Melbourne serves Brandywine, Police Foundation and Carriage Gate with this line.

In response to the Mayor, Mr. Ralls showed the area south of 192 where West Melbourne has a lift station and sewerline. The 10-inch line runs westward under I-95. He confirmed for the Mayor that although we are not certain of West Melbourne's plant capacity, we do know that their plant can't handle 600-plus acres of development west of I-95. According to the property owners we have talked to, approximately 1.5 million gallons per day would be generated by proposed development.

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The Mayor informed Council that Mr. Ferrell (property owner south of 192) is in the audience. Mr. Ferrell would like to develop property in this area; however, West Melbourne's line would not be able to accommodate the waste that would be produced by a development of this size.

In response to Council Member Joanne Corby, Mr. Ralls reviewed the map along with the various property owners' names and acreages.

Mayor Goode stated that the Thornberg property and the Welchwood property annexed into West Melbourne in 1994. They would like to have water and sewer service; however, West Melbourne has not been able to accommodate that. They would like to de-annex and then annex into Melbourne to obtain services.

At the request of the City Attorney, Mr. Ralls pointed out the areas encumbered by pre-annexation agreements.

Attorney Gougelman reminded Council that, after we learned that the Hesse property petitioned West Melbourne for annexation, we sent a demand letter requesting the owner/developer to come into compliance with our pre-annexation agreement. Since that time, he and Mr. Ralls met with the developer. Staff received a settlement proposal late last week, which is being studied and will soon be forwarded to Council.

Mayor Goode added that the Hesse property received first reading of an annexation ordinance in West Melbourne. West Melbourne halted the process after learning about the pre-annexation agreement. Attorney Gougelman stated that West Melbourne City Manager David Reynal has agreed not to pursue that annexation; however, if they decide to move forward, they will provide Melbourne with notice.

Mr. Schluckebier asked Council for direction. He reported that he is not sure we can stop discussions with the County because we asked them to negotiate. If we continue with those negotiations, West Melbourne will be a party. We can pursue an answer that is more direct or we can enter into a drawn out process. Although the property owner south of 192 has an agreement with West Melbourne, it is his desire to be served by Melbourne. Mr. Schluckebier said it is important to point out that we are asking West Melbourne to honor someone else's pre-annexation agreement with us. He added that Melbourne does consider itself to be the major utility provider.

The City Manager asked Council to determine how we wish to accommodate utility interests in this area. There are other objectives as well, including the future St. Johns River Heritage Parkway. It is Melbourne's desire to connect to at least 192. We have evidenced that desire by acquiring frontage acreage on I-95 for allowance of the future Parkway or interchange. Now is the time to pursue interests in this area because these issues will not likely align in the future.

Mr. Contreras referenced the compromise proposal where Melbourne would redefine its interest to the area north of 192 and west of I-95 and West Melbourne would define its area

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for the remaining quadrants. He noted that he does not have a problem with this; however, his concern relates to the water distribution. He would like to know if we are still pursuing an agreement where Melbourne would assume the lines and responsibility of the system.

Mr. Schluckebier replied that issue is still part of the discussions. It is our understanding that West Melbourne would be agreeable to a water franchise arrangement west of I-95 in that area. He clarified that West Melbourne has water south of that area, which would not be part of a franchise arrangement.

Mr. Contreras said that in talking to Mr. Ferrell, he learned that they have wanted to move for some time. If the agreement doesn't come to fruition, the developer is placed in an interesting position.

A brief discussion followed regarding the rates that West Melbourne residents pay for water. Mr. Schluckebier confirmed that West Melbourne has its own distribution rates and West Melbourne consumers probably pay a rate 15-20% higher than what Melbourne customers pay.

Mrs. Palmer asked if the compromise – making U. S. 192 the dividing line – would result in West Melbourne agreeing to a franchise arrangement in this area and if the water agreement and annexation/boundary issues would fall into place. Mr. Schluckebier replied yes, although there are property owners south of U. S. 192 who are concerned that West Melbourne does not have the wastewater capacity to serve their needs. They are looking for assurance that they will not be left out in the cold. However, those properties long ago signed agreements and made their arrangements with West Melbourne.

The Mayor stated that wastewater agreements were signed in 1994 and do not include the provision of potable water.

Mrs. Palmer asked if the property owners who have been waiting since 1994 for service have any legal avenue. The Mayor replied that they have a right to de-annex if the City can't provide services.

The City Manager informed Council that the Thornberg and Welchwood properties are in West Melbourne. The property south of U. S. 192 being discussed is not in West Melbourne. They simply have an agreement to annex into West Melbourne and that agreement was entered into about 12 years ago.

Mr. LaRusso asked for confirmation that we are serving Brandywine, Carriage Gate and the Police Foundation. Mr. Schluckebier said yes and noted that is an indication that our lines have been in place for about 20 years.

Mrs. Corby asked for clarification on the term "serving". Mr. Schluckebier said that we provide water only to those three areas. Our sewer service extends to 192 and I-95, about a mile outside of our City limits.

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Mr. Contreras repeated that on paper the compromise looks good; however, in reality it does not fly for the property owners south of U. S. 192. Their property would be useless without sewer. Mrs. Corby agreed.

The City Manager said the difficulty is that we do not have exact information about West Melbourne's current sewer capacity and pledged capacity. We do not believe they have sufficient capacity.

Mr. Contreras asked how we garnish that information if Melbourne is not in a position to obtain that information.

The Mayor referenced the following letter distributed to Mayor & Council: Dated November 27 from Attorney Clifton McClelland, representing several properties (Jaco Associates, Blair Associates, Diversified Properties, 192 Associates, Ferrell, Samuels and Associates Development, LLC and New Urban Group, LLC) located west of I-95 and south of U. S. 192. Samuels and New Urban plan to acquire approximately 170 acres from Ferrell and the acquisitions will constitute one of the largest and most commercially significant parcels west of I-95. Mr. McClelland has asked that no unit of government enter into any agreement until his clients have the opportunity to review the agreement, assess its technical and economic feasibility and its impact on the property.

Mayor Goode commented that he assumes the attorney representing these properties is going to determine if they can break the annexation agreement with West Melbourne. He said that property is legally encumbered. The Mayor stated that if he had his way, Melbourne would service the entire area. He commented that the property is proposed to be developed with high end retail, high taxable value, which would more than pay for the cost of extending water and sewer service.

Mr. Contreras said that based on the letter from Mr. Ferrell's attorney, it appears that the ball is in their court. It doesn't do us any good to make a decision because we don't control the outcome.

The Mayor recommended that we ask the County for more time to give the developers time to determine what they need to do.

Mr. Schluckebier asked if Council wants to give them time to perfect an exit from their agreement. In the meantime, we can ask West Melbourne to be more specific as to their ability to serve that area; however, they are under no obligation to provide us information.

Mr. Contreras said he is not sure he can support an agreement at this point when properties, especially south of 192, may not be able to continue forward with their investment.

Mayor Goode agreed and said that has been his concern all along. He added that he is not ready to draw the line at 192.

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Mr. LaRusso stated that this Council has been conscience about property owners' rights. It seems we are in a spitting contest and the property owners are caught in the middle. They can't acquire services to proceed with their investments and this is very frustrating. He added that both cities should determine how to proceed in order to benefit the property owners.

Mrs. Palmer said the outcome should be that the people who live in this area get the best and most economical services. It appears that the property owners with pre-annexation agreements with West Melbourne would be the ones to compel West Melbourne to prove whether they are ready and able to provide water and sewer capacity before we can enter into a compromise or agreement.

**c. Areas of pending annexation interests**

Mayor Goode referenced the e-mail from Council Member Richard Contreras asking that this item be withdrawn from the agenda. The City Manager added that it was Mr. Contreras's intent to discuss this at the December 19 meeting rather than at the workshop meeting.

**d. Review of the "Gleason property" possible land purchases**

The City Manager introduced the item. The following is an excerpt from the agenda report:

At its September 19 meeting, Council authorized staff to pursue purchase of the property that is owned by Gleason Brothers, Inc. This involves several large parcels of land west of I-95 and north of U.S. 192. The City Attorney drafted a purchase contract that defines a \$1,800 per acre price and gives the City a 120-day "free look" period. Under this arrangement, the City may purchase all the land or none of the land.

One of the City's main interests in considering the acquisition of this land is the potential benefit to the proposed St. Johns River Heritage Parkway project. It may provide an alternative route around certain parcels where Brevard County's right-of-way negotiations become too costly. Its wetlands also have some potential to mitigate any impact the Parkway project will have on wetlands along its route.

At this time, City staff does not know the exact value of these parcels as they relate to the Parkway project. Brevard County staff is currently involved in the layout of the Parkway and in right-of-way acquisition. A consultant is also evaluating the wetland mitigation potential of the Gleason parcels. All of this information is certainly key to any consideration of purchasing the property and should become more definitive during the "free look" period.

Following a meeting with St. Johns River Water Management District Deputy Director Mike Slayton, the District agreed to consider its financial participation in acquiring this property. The District's interest is in wetlands. In fact, the

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District had been interested in some of these parcels a few years ago, but was not able to finalize a purchase.

District staff has already initiated the appraisal process. For a purchase of this size, appraisals by two qualified wetland appraisers are required followed by a review of those two appraisals. A site inspection for the appraisers is scheduled for December 6. The appraisers usually complete their reports in a few weeks.

We will not know to what extent the District can participate in this purchase until their work is completed. However, it should be completed before the end of the City's 120-day "free look".

In addition to any benefit the land may provide to the parkway project, there are several other benefits the City could realize through its acquisition and annexation.

All of these parcels are upstream of the water intake for the surface water treatment plant. The 508-acre parcel is immediately south of and adjacent to the City property on which the treatment plant is located. The City's Comprehensive Plan recognizes the importance of conservation in the area defined as the "St. Johns River Valley". It states that the development in this ecological community has and will continue to have detrimental effects on Lake Washington, the major water source for Melbourne and South Brevard County. There is value in owning and controlling these properties.

Other secondary benefits the property may provide are related to open space, green space and recreation needs defined in the City's Comprehensive Plan.

City staff will return to Council with more information on the District's appraised values and the District's interests/financial contributions to the acquisition of the property. Staff will also have more information on the value of the land relative to the Parkway project.

Mr. Ralls displayed a map showing the proposed route of the Parkway. Another possible use of the property would include a wetlands mitigation bank.

Mayor Goode commented that out of the 640 acres, about 30 acres would be developable. He asked Mr. Ralls to elaborate on the mitigation bank. Mr. Ralls said that when a developer has to buy wetland property that is part of a mitigation bank, the mitigation is at a higher ratio. The Mayor added that this would allow us to recover a portion of our investment.

Mr. LaRusso asked if there is any potential development for this site. The City Manager said nothing has been narrowed down, with the exception of the Parkway.

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Following a brief discussion, Attorney Gougelman said that this will probably return on the December 19 agenda.

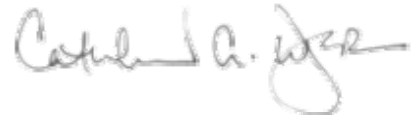
4. COUNCIL DISCUSSION AND DIRECTION

Discussion occurred during each item (above).

5. ADJOURNMENT

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

The meeting adjourned at 7:45 p.m.



\_\_\_\_\_  
City Clerk – 12/1/2006

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