

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 22, 2007



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. Council Member Kathy Meehan gave the invocation.
2. Pledge of Allegiance.
3. 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
	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

4. Proclamations and Presentations

None.

5. Approval of Minutes – May 8, 2007 Regular Meeting

Moved by Contreras/Corby for approval. Motion carried unanimously.

6. City Manager's Report

Vice Mayor Mark LaRusso said that it is his understanding the School Board has responded positively about the need for exterior maintenance on their building located on Pineapple Avenue. City Manager Jack Schluckebier agreed and explained that the School Board's intent was to begin painting and applying cosmetic improvements by June 1; however, due to selection of a new paint color, they will need to obtain Architectural Review Board approval. Mr. LaRusso thanked the School Board staff and members for stepping up to the plate on this issue.

Council Member Richard Contreras referenced the information about relocation of employees who work in the annex buildings (which will be demolished in September as part of the new City Hall construction). He asked if there has been any further development since the report was issued.

City Engineer Jenni Lamb reported that staff visited the old K-Mart facility (currently number

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eight on the list). The space is available and has adequate parking and computer service. It may end up being one of the front-runners.

Mr. Contreras asked about the “extensive build-out” as noted in the report that would be required for the K-Mart facility. Mrs. Lamb advised that the owner is willing to build new restroom facilities; he believes that can be accomplished in 60 days. Additionally, the owner said that he would furnish partitions to create office space. That option was not previously considered. Mrs. Lamb concluded by saying that the other front-runner is Hibiscus Office Park. Staff will continue weighing all options.

7. Public Comments

Evelyn Morrison, 628 Paul Bryce Drive, discussed the history of civil rights and civil rights legislation. She asked that the City consider an open dialogue on how to uphold federal and state laws regarding civil rights. And, she would like to see the various cities and Brevard County adopt civil rights legislation.

Mayor Goode asked Council to consider Item 13 at this point. Without objection, Item 13 was considered.

Council began with “New Business” after the recess (immediately after the conclusion of Item 13).

NEW BUSINESS

8. ORDINANCE NO. 2007-27 (CU-2007-04/SP-2007-06) TUMBLEWEEDS: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a gymnasium and two office buildings on a 3.37±-acre parcel zoned C-1 (Neighborhood Commercial), located on the south side of Parkway Drive, west of the intersection of Parkway Drive and Wickham Road. (Owner/Applicant - Tumbleweeds Gymnastic, Inc.) (Representative - Jake Wise, P.E., Construction Engineering Group) (First Reading - 5/08/07)

Attorney Gougelman read Ordinance No. 2007-27 by title. There were no disclosures by Council and no comments during the public hearing. Jake Wise, representing the applicant, was present and available for questions.

Moved by Contreras/Meehan for approval of Ordinance No. 2007-27 based on the findings in the Planning and Zoning Board memorandum and the conditions in the ordinance. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby, LaRusso and Goode

Motion carried unanimously.

9. ORDINANCE NO. 2007-28 (CPA-2007-02) AND ORDINANCE NO. 2007-29 (Z-2007-1105) GLEN MOLIN: Ordinances providing for a Comprehensive Plan Amendment and a zoning

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change on a 1.6±-acre site, located on the west side of Avocado Avenue, south of Aurora Road, and north of Law Street. (Owners - Glen Molin/Herbert L. Pittman/Allen Newman/Wayne Swank & James Goodrich/William F. Ford, III/Donald Morton) (Applicant/Representative - Glen Molin) (P&Z Board - 4/19/07)

- a. Ordinance No. 2007-28/CPA-2007-02: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Low Density Residential to Commercial/Medium Density Residential on six lots totaling 1.6± acres. (First Reading - 5/08/07)
- b. Ordinance No. 2007-29/Z-2007-1105: (Second Reading/Public Hearing) An ordinance providing for a zoning change from R-2 (6) (One-, Two-, and Multiple-Family Medium Density Residential with a cap of six units per acre) to C-1 (10) (Neighborhood Commercial with a cap of 10 units per acre) on six lots totaling 1.6± acres. (First Reading - 5/08/07)

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

Moved by LaRusso/Thomas for approval of Ordinance No. 2007-28 based on the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby, LaRusso and Goode

Motion carried unanimously.

Moved by Palmer/Contreras for approval of Ordinance No. 2007-29 based on the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby, LaRusso and Goode

Motion carried unanimously.

10. ORDINANCE NO. 2007-30 (AR-2007-215), ORDINANCE NO. 2007-31 (CPA-2007-03), AND ORDINANCE NO. 2007-32 (Z-2007-1109) ROSS PROPERTY: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on a 1.88-acre parcel, located on the east side of the undeveloped Turtle Mound Road right-of-way, south of Aurora Road. (Owner - Gerald Ross) (Applicant/Representative - Scott D. Widerman, Esq.) (P&Z Board - 4/19/07)
 - a. Ordinance No. 2007-30/AR-2007-215: (First Reading/Public Hearing) An ordinance providing for annexation of 1.88 acres. (Denied - 5/08/07; motion to reconsider and leave pending)
 - b. Ordinance No. 2007-31/CPA-2007-03: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential on 1.88 acres. (Postponed - 5/08/07)

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- c. Ordinance No. 2007-32/Z-2007-1109: (First Reading/Public Hearing) An ordinance providing for zoning designation of R-1AAA (Single-Family Low Density Residential) on 1.88 acres. (Postponed - 5/08/07)

The applicant, Scott Widerman, was present and available for questions.

Note: At the May 8, 2007 Council meeting, a motion to approve Ordinance No. 2007-30 failed by a three to three tie vote. The following motion was made: Moved by Goode/Corby to reconsider and leave pending. No action was taken on the Comprehensive Plan amendment and zoning designation ordinances.

Mayor Goode referenced the action taken at the May 8 meeting. He called the question on the motion to reconsider and leave pending. Motion carried unanimously.

Moved by Palmer/Meehan for approval of Ordinance No. 2007-30 based upon the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby, LaRusso and Goode

Motion carried unanimously.

Moved by Contreras/LaRusso for approval of Ordinance No. 2007-31 based upon the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby, LaRusso and Goode

Motion carried unanimously.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-32 based upon the findings contained in the Planning and Zoning Board memorandum.

Mr. LaRusso asked Attorney Gougelman to comment on the proposed R-1AAA zoning. Attorney Gougelman explained that R-1AAA is a large acre type of zoning. This zoning designation would be consistent with zoning Council designated for property to the south and west in the City. There are some larger acre plots in the area but by and large they are breaking down; the area is slowly urbanizing.

Mayor Goode noted that two people have asked to speak.

Paul Ingram, 1699 Burton Lane, pointed out that a similar rezoning was brought before the County two or three years ago, but it was denied in Planning and Zoning.

Frank Rothery, 1740 Burton Lane, presented a letter from his neighbor, Jim Easter (3787 Aurora Road), who was not able to attend the Council meeting. The following excerpts are from Mr. Easter's letter:

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“I reside within 500 feet of the property in question but never received written notice. I am opposed to any zoning change along Burton Lane which will increase the residential development. All the homes along Burton Lane are at least one acre estates and should remain at that.”

Continuing, Mr. Rothery said that the applicant has offered property to the City for the extension of Turtle Mound Road in exchange for approval of the annexation and rezoning. He stated that the increase in density will penalize people who live on one-acre lots.

The question was called. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby, LaRusso and Goode

Motion carried unanimously.

11. ORDINANCE NO. 2007-33 (Z-2007-1108AD/LDR-2007-01/FOC-2007-02) STREET LIGHTS: (Second Reading/Public Hearing) An ordinance amending Appendix B of the City Code, entitled Zoning, Article II and Article IX, and Appendix D, Chapter 8, by adding a definition of residential street lights and revising the definition of improvements to include lighting. (Applicant - City of Melbourne) (First Reading - 5/08/07)

The City Attorney read Ordinance No. 2007-33 by title. There were no comments during the public hearing.

Moved by Contreras/LaRusso for approval of Ordinance No. 2007-33. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer, Corby, LaRusso and Goode

Motion carried unanimously.

12. COUNCIL ACTION RE: Appointment of one member to the Golf Courses Advisory Board. (Postponed - 5/08/07)

Mayor Goode reported that Milo Zonka has submitted a request to speak. Moved by Palmer/Corby to allow Mr. Zonka to speak. Motion carried unanimously. Mayor Goode called for Mr. Zonka. There was no response from the audience. Apparently Mr. Zonka left the building.

Council Member Joanne Corby nominated L. Paul Murray and Mr. Contreras nominated Alice Emerson. Moved by Corby/Contreras to close the nominations. Motion carried unanimously. The roll call vote was:

Murray: Meehan, Thomas, Palmer, Corby, LaRusso and Goode

Emerson: Contreras

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Appointed: L. Paul Murray (5/22/2007 – 11/8/2010; unexpired term plus three-year term)

NEW BUSINESS

13. COUNCIL ACTION RE: Termination of the City Manager (Requested by Council Member Joanne Corby)
- a. Consideration of Termination.
 - b. Consideration of appointment of an Interim City Manager (as necessary and depending upon resolution of Item 13.a.)

Council Member Corby opened with the following: “What’s the secret to building a great organization? How do you sustain growth, profit and service in an organization that can literally change overnight? And, how do you build a culture of commitment and high-performance when the notion of loyalty on the part of the customers, employees and employers seems like an old-fashioned leftover? I can answer these questions with two words – be yourself. Tonight is about future, about effective government and about communicating clear direction.”

Mrs. Corby said one of the biggest mistakes profit and non-profit organizations make is requesting employees be accountable and responsible without giving authorization. She noted that this is the current management style of our City, and this autocratic style of management does not work. It is management through intimidation, fear, censorship and lack of trust. The preferred, successful style is democratic management, which is the style recommended by the International City/County Management Association. She pointed out that the City and Dr. Schluckebier are members of ICMA.

Mrs. Corby quoted from Dr. Schluckebier’s interview conducted with the City Council in December 2002. During the interview he noted that on the basis of his background and expertise, he was able to see that the City was on the verge of making some hard fundamental decisions. Mrs. Corby stated that the City is currently on the verge of making some hard fundamental decisions. After reviewing areas in which she has great expertise, she noted that the City’s entire human capital has unfulfilled needs. There is no two-way communication. Trust has been broken and being proactive and forward thinking only gets questioned. She made the following observations: morale is low; there is a sense of discomfort and fear throughout the City; the letter that requested employees contact their legislators for tax reform and the letters of support for Dr. Schluckebier are case in point of management by fear and intimidation; 80 employees throughout the City are in the DROP plan; the entire management team of the Police Department is in the DROP plan and there is no succession plan in place; exit interviews are not being conducted and employees are running out the door.

Continuing, Mrs. Corby said that Council receives conflicting reports from the same department; Council receives time sensitive information only on a weekly basis; Dr. Schluckebier and some department directors are referred to as “the ghosts” due to a lack of

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presence; policies in place work against our First Amendment right; memos to management must be routed through directors; and there are no consistent meetings with frontline employees.

Mrs. Corby recalled that during a meeting with the City Manager during her campaign, her radar went up when Dr. Schluckebier's response to her request to meet with department directors was met with, "Absolutely not. The buck stops with me. I run the City." She pointed out that enigmatic land purchase deals appear on an agenda with bank closing dates scheduled two days later; unbalanced attention to annexation and infrastructure is occurring; and the police officer who assisted the Eau Gallie High School students with their skateboard park presentation has been questioned.

Regarding the democratic management style, Mrs. Corby said that advantages include: sets in place leadership by example, meets social needs of all levels of employees, authority is delegated through the entire workforce, useful when complex decisions have to be made. The disadvantage is that mistakes will be made; however, with proper training, communication and mentoring, those mistakes can be learned from and minimized.

Mrs. Corby complimented the City for being frugal, maintaining a strong balance sheet, watching for costs and paying attention to fiscal fitness. She added that leadership by numbers only works for a short period of time. Not one Council Member would agree that human capital is not important. Business can be fun. There are enough organizations that have people going to work robotically and, at best, they are bland and impersonal. Melbourne has spent too much money and effort revitalizing itself to be bland and there is nothing impersonal about old-fashioned leftovers.

Mrs. Corby concluded by saying that Melbourne needs a leader who can set clear cut goals, link the strategies, set parameters and time frames and then put trust in employees and encourage them to be productive by using two way communication to empower them to make decisions. That is effective government. Melbourne's problem isn't financial – it's management style. And, it is time for new direction.

Mrs. Corby's motion to terminate the City Manager's contract without cause did not receive a second.

Mayor Goode read the following items into the record: 1) Petition containing approximately 260 signatures from employees in support of retaining Jack Schluckebier. (Note: The employees listed their departments/divisions on the petition as Public Works, Utilities, Streets, Leisure Services, Parks Maintenance, Customer Service, Wastewater Collection, Water Distribution, Utility Operations, Fleet Management, Engineering, Water Production, Auditorium, Wastewater Treatment, Finance, Water Reclamation, City Manager, Planning and Economic Development, Information Technology, City Clerk, Geographic Information System, Golf Courses, Code Compliance, Management Services, Risk Management, Purchasing, Payroll, Utility Billing and Collection, Personnel, Cemeteries, Police, Housing and Community Development and Melbourne International Airport.) 2) Petition signed by every department director in support of retaining Jack Schluckebier as City Manager. 3) Letter in support of Dr. Schluckebier dated May 11 from Richard Lyons, Business Manager,

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Laborers' International Union of North America. (Note: LIU represents approximately 230 blue-collar workers in Melbourne.) 4) 30 individual letters of support from employees and the public.

City Manager Jack Schluckebier stated that he would like to have it acknowledged that he is a veteran, high quality City Manager. That is based on the fact that the City has employee input and based on his performance, which Council has observed and rated. The City's operation is geared toward achieving optimal performance. In our organization of 1,000 employees, there is minimal turnover and few grievances.

Mr. Schluckebier stated that among city managers in Florida, he has the highest level of education and the most veteran experience. He has received very good performance evaluations from this City Council on average over the last four years as well as the three other cities where he has served. He pointed out that he is the one who Council thought well enough, just nine months ago, to nominate for the City Manager of the Year Award.

The City Manager highlighted the steps he has taken, which go significantly beyond the traditional City internal communication systems. He implemented "Friday field days" where he spends Fridays with one to three people from different departments. He circulates among 80 to 90 employees year round and brings an open office policy to them; he doesn't wait for employees to come to him. He implemented quarterly management meetings where the group of 80 to 90 people are invited to attend and are given an opportunity to anonymously submit ideas that need attention, improvement or correction. That process has worked and the anonymity has been especially helpful. The City has instituted employee committees comprised of employees throughout the City on health insurance, grant seeking, etc. Since he has been City Manager, department staff meetings have been held ahead of Council meetings, not behind them. A coordinated effort is made across the City to advise, research, and provide whatever is needed for the benefit of Council decision-making. Finally, for the first time Council is accepting input from the committees through an annual report. Mr. Schluckebier summarized by saying that we have done well to expand on the communications in the City.

Continuing, Dr. Schluckebier stated that he doesn't believe, as evidenced by the people in attendance at this meeting, that there is any sense of intimidation. He informed Council that his advice to staff when this item was first placed on the agenda was that he could neither encourage nor discourage activities.

Mr. Schluckebier closed by saying that he thinks the proposal is unwarranted and that he is an extremely capable individual serving as Manager. He commented that the relationship requires a balanced arrangement between City Manager and City Council. And, he hopes that we can contain that, retain that, and improve upon it. Dr. Schluckebier stated, "I want to express appreciation to the people who have, through their own letters or signing something, expressed support from across the community. I think that it is a good showing of the confidence and respect and the management style that I think that the folks from the shop floor in the City have given me."

Mrs. Corby declared, "Dr. Schluckebier, I was wrong. I misjudged the direction that this

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Council wanted to take the City, so I'm glad that you're here and I look forward to continue working with you."

Mayor Goode noted that Mr. Schluckebier's representative would like to make a few comments. Council Member Cheryl Palmer asked to speak after the City Manager's representative.

Patricia Sigman, attorney, Altamonte Springs, stated that she represents Jack Schluckebier and, on his behalf, she would ask the City Council to go beyond just not seconding the motion and actually give him a full vote of confidence. She said that it is important to be able to put this episode behind him, behind staff and behind the community and move forward. Ms. Sigman provided the following in support of her request: 1) One of the recitals in the City Manager's employment contract states "to make possible full work productivity by assuring the employee's morale and peace of mind with respect to future security." 2) A vote of confidence is important for Mr. Schluckebier's reputation. There have been stories in the media and this matter is public. Although there are a lot of wonderful people in the audience in support of Mr. Schluckebier, there are also a lot of people in the community who won't really know unless City Council makes a clear statement in support. 3) A vote would assist in rehabilitating his reputation and removing the tarnish of these allegations from his reputation.

Ms. Sigman stressed that this is important because, although this was framed as a "without cause" termination, things have been stated to look like a cause allegation. And, these allegations need to be ended with a vote of confidence. She concluded by commenting that a vote of confidence would convey, "You're doing a good job, we appreciate you, this is over and let's move on."

Council Member John Thomas stated that he believes it is in the best interest to have Dr. Schluckebier as our City Manager.

Moved by Thomas/Meehan to give Dr. Schluckebier a vote of confidence.

Council Member Cheryl Palmer stated that she had previously asked to speak. Mayor Goode replied this is the time to speak now that a motion is on the floor.

Mrs. Palmer informed the audience that Mrs. Corby's motion did not come as a personal vendetta. Mrs. Corby was responding to things that have been brought to her attention from employees of the City of Melbourne. Mrs. Palmer added that these things have been brought to her attention as well. However, they are generalized and unquantifiable. In many cases, it is more a question of morale and dissatisfaction – perhaps not among the people who work in City Hall or in close quarters with Dr. Schluckebier.

Mrs. Palmer stated that during the City Manager's annual evaluation, it is traditional not to say anything negative because it's not serious enough to go in his file. She added that she is sure that just about every member has some things that they have not agreed on with Dr. Schluckebier. She reported that she has made him well aware of the times she has disapproved of some of his actions, especially his preemptive actions. For these reasons,

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Mrs. Palmer said that a vote of confidence is premature.

Regarding the termination, Mrs. Palmer said she does not wish to vote to let someone go without cause and harm them on a personal and professional level, although this is within the parameters of Council's responsibility and authority. Mrs. Palmer stated that this is a good time to clear the air and really make Mr. Schluckebier comfortable. She recommended that each member take the time to put on paper his or her thoughts – both positive and negative – as to the City Manager's performance. She said this is not for his file, but for him to peruse and get an understanding on where this Council is coming from. A blanket vote of confidence does not address any of the issues and we will continue to have grumbling and an undercurrent of suspicion and accusation. She summarized by saying that Council should clear the air with the Manager so that he is really comfortable being here and our employees know that we are not just good old boys down here at City Hall patting one another on the back.

Mr. Thomas said he does not believe you could go to any large organization and not find some room for improvement. He added that he does have confidence that Dr. Schluckebier is an excellent City Manager and he believes he's done a good job. Mr. Thomas recommended that Council move forward with the employee satisfaction survey, which will provide the forum for employees to give an assessment of their concerns. Regardless of whether it's the City Manager, a Department Director, or frontline supervisor, problems need to be identified, expectations need to be set and people need to be held to those expectations. He finished by saying that Dr. Schluckebier has done a very good job for the City of Melbourne. He (Mr. Thomas) realizes there are issues that need to be addressed; however, he is confident that Council and staff will address them.

Council Member Kathy Meehan stated that it has been an honor and privilege working with Dr. Schluckebier. And, as far as the good old boy system in City Hall, she said she does not see that. She sees a great staff and a lot of folks who want to do good for the City. She stated, "I think Melbourne is awesome and I think Jack is awesome. Let's move forward and let's give Jack a vote of confidence."

Mr. Contreras said that he is a firm believer in due process. There are annual evaluations, etc. And, based on the last evaluation, he was probably the most critical. All things should come to the level of what they need to come to. In this instance, by virtue of a second not being received, it is a show that due process should and must take its place.

Mr. LaRusso said that Mrs. Corby showed a lot of chutzpah by bringing this to the table. There has been a lot of grumbling. He noted that she followed the process; however, that does not make it right. Mr. LaRusso added that no one locked horns more than he and the City Manager on many different issues. However, over the period of a year they worked hard and worked through the issues.

The question was called. The roll call vote was:

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

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Nay: Corby

Motion carried.

Mrs. Palmer said she voted aye because no one grasped her idea; however, she encouraged each member to write the City Manager a letter.

Recessed: 7:08 p.m.

Reconvened: 7:23 p.m.

After recess, Council returned to the first item under New Business.

14. COUNCIL ACTION RE: Authorization to establish a project for the implementation of the Unidirectional Flushing Program for the Water Distribution System with initial funding for project management by Reiss Environmental, Inc. in an amount not to exceed \$150,000; and an appropriation of \$150,000 from the Water & Sewer Retained Earnings Prior Year Surplus to establish a project budget.

Assistant Public Works and Utilities Director Harold Nantz was present and available for questions. Mrs. Palmer said she has received many calls. The City has flushed specific areas; however, apparently that is ineffective. She asked Mr. Nantz to say whether this is going to clear up our water problem.

Mr. Nantz said it will clear up the portion it is designed to clear up, which is solids deposition in the water distribution system. Our old pipe water quality complaints will not be solved until we replace the pipes, and we are doing that on an annual basis. This program is specifically designed to remove and scour deposits of solids that may have occurred in the pipe over the years; that happens in every distribution system. This flushing program will help mitigate problems until old pipe is replaced. He confirmed that there will be an improvement.

A brief discussion followed regarding the various zones, public notice process and the criteria for prioritizing.

Moved by LaRusso/Meehan to establish a project for the implementation of the Unidirectional Flushing Program with initial funding for project management by Reiss Environmental, Inc. in an amount not to exceed \$150,000; and an appropriation of \$150,000 from the Water & Sewer Retained Earnings Prior Year Surplus to establish a project budget.
Motion carried unanimously.

15. COUNCIL ACTION RE: Change Order No. 4 to the Lake Washington Surface Water Treatment Plant Improvements Contract, Phases 2A & 2B, Project No. 30102 to construct the Canova Beach Booster Pump Station Permanent Chemical Feed System, Project No. 30207, Wharton-Smith, Inc., Palm City, FL - \$532,325 and an appropriation of \$487,200 from Water and Sewer Prior Year Surplus to provide interim financing prior to permanent financing by the Water & Sewer Improvement Revenue Bonds, Series 2007B.

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City Engineer Jenni Lamb briefed Council and pointed out that since this project will be funded in part by the Water and Sewer Improvement Revenue Bonds, Series 2007B, interim financing is recommended through an appropriation from Water and Sewer Prior Year Surplus of \$487,200. She added that a representative from Hazen and Sawyer is present and available for technical questions.

Moved by Thomas/LaRusso for approval of Change Order No. 4 to Lake Washington Surface Water Treatment Plant Improvements, Phases 2A & 2B (City Project No. 30102) for construction of the Canova Beach Booster Station Permanent Chemical Feed System in the amount of 532,325 and an appropriation of \$487,200 from Water and Sewer Prior Year Surplus to provide interim financing. Motion carried unanimously.

16. CONSENT AGENDA:

Moved by LaRusso/Thomas for approval of the consent agenda as recommended. Motion carried unanimously.

- a. Contract award for the construction of a fountain at Jimmy Moore Park, Project No. 10306, Fountain Design Group, Boca Raton, FL - \$26,328 and transfer of \$1,983 from Miscellaneous General Construction to this project budget.
- b. Approval of a design/build utility agreement between the Florida Department of Transportation (FDOT) and the City of Melbourne providing for methods and procedures to resolve issues that might arise during FDOT's construction of a new interchange at the Pineda Causeway extension.
- c. Contract award for granular activated carbon exchange services, Calgon Carbon Corporation, Pittsburgh, PA - \$116,595/filter; estimated annual cost of \$699,570.
- d. Contract award for the purchase and delivery of liquid oxygen, Air Liquide Industrial U.S. LP, Orlando, FL - \$105.58/ton; estimated annual cost of \$105,580.
- e. Contract award for the purchase and delivery of carbon dioxide, Air Liquide Industrial U.S. LP, Orlando, FL - \$148/ton; estimated annual cost of \$106,560.
- f. Contract award for custodial services for 12 City facilities, Amerishine, Orlando, FL - stated unit prices; estimated annual cost of \$89,220.
- g. Purchase of hydrogen peroxide 35% solution, U.S. Peroxide, LLC, Atlanta, GA - \$0.5443/pound; estimated annual cost of \$53,341.40.
- h. Purchase of three replacement vehicles, Saturn of Sebring, Sebring, FL - \$23,189 and Garber Chevrolet, Green Cove Springs, FL - \$47,522.
- i. Purchase of 14 Jaguar P7150 portable 800 Mhz radios and accessories for Police Operations, Communications International, Inc., Vero Beach, FL - \$47,074.70.

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- j. Contract award for aquatic weed control service, Applied Aquatic Management, Inc., Eagle Lake, FL - \$46,045.
- k. Contract award to replace security fencing and gates at the Actiflo and Reverse Osmosis Plants and the Hibiscus Road Pump Station Facility, East Coast Fence, Cocoa, FL - \$25,991.
- l. Approval of the Brevard County Metropolitan Planning Organization Transportation Improvement Program priority listing.
- m. Request for authorization to provide a letter of support from the Mayor to the Florida Department of Law Enforcement Office of Criminal Justice Grants in support of a Byrne Grant proposal from the Brevard County Sheriff's Office for the prisoner transportation/booking improvement program.
- n. Lien Rescission CE-05-094: Denial of a request for lien reduction from \$14,000 to \$0. (Cecil Pressley - 1815 Southland Avenue)
- o. Resolution No. 2037: A resolution adopting names for private streets in the Crossroads Village Commercial Complex.

17. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

18. SITE PLAN APPROVAL (SP-2007-11) FLORIDA TECH SOUTH VILLAGE STUDENT HOUSING: (Public Hearing) A request for site plan approval to allow development of three dormitory buildings with 382 beds for student housing on a 12±-acre portion of a 57.657±-acre parcel zoned I-1 (Institutional), located on the west side of Babcock Street, south of University Boulevard, and north of Florida Avenue. (Owner/Applicant - Florida Institute of Technology) (Representative - Teimouri and Associates) (P&Z Board - 5/03/07)

Planning and Economic Development Director Cindy Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of the site plan as presented on a single-sheet plan prepared by Teimouri and Associates, Inc., of Melbourne, Florida, Project Number 2006-123, with a signed and sealed date of April 17, 2007, subject to 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. Appropriate environmental permits must be obtained as part of the construction plan review process.

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- c. 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.
- d. The proposed building shall be substantially consistent with the renderings submitted by the applicant.
- e. The applicant shall complete the roadway improvements of the south entrance within two years of site plan approval or post a performance bond, if necessary, to secure the completion of the south driveway improvements. All Babcock Street modifications/improvements shall be subject to review/approval/permitting by the Engineering Department and the Florida Department of Transportation during the construction plan review process.
- f. As required by Chapter 10, Appendix D, and Chapter 32, Melbourne City Code, to reserve capacity, the owner/developer shall be required to pay the capacity reservation fee (10%) in the amount of \$55,848.10 for transportation, water and sewer impact fees. Payment must be received by the City of Melbourne within 10 business days of the date of rendition of this development order by City Council approval. The transportation, water and sewer capacity reservation shall not become effective until payment of the capacity reservation fee has been made payable to and received by the City of Melbourne. Failure to have reserved capacity shall be a basis for withdrawing approval of this development order.

Mrs. Meehan disclosed that today she spoke with Carey Gleason from Florida Tech about the site plan. They discussed the number of beds and the fact that it won't be built on wetlands. Mrs. Meehan stated that this will be an asset to Florida Tech and the City of Melbourne.

Mr. Thomas said that on May 21 Ms. Gleason left him a message asking him to call if he had any questions about the site plan.

Mayor Goode opened the public hearing.

Dwayne McLay, representing Florida Tech, stated that this development will have a major, positive impact on the university.

Mrs. Palmer recalled that some time back there were problems at Florida Tech with an air conditioner unit on top of a building disturbing nearby residences. She asked about the configuration of the proposed development. Mr. McLay replied that this development will not be near any residences.

Moved by Thomas/Meehan for approval of the site plan, based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

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19. SITE PLAN APPROVAL (SP-2007-07) WICKHAM PARK PHASE II: SENIOR CENTER AND COMMUNITY CENTER: (Public Hearing) A request for site plan approval to initiate Phase II of park improvements, including a 10,600 square foot senior center, an 18,000 square community center, a 12-court shuffleboard area, relocating the existing driveway on Wickham Road, and providing an internal connection to the Equestrian area within the park on a 15.53±-acre portion of a 475.428±-acre parcel zoned I-1 (Institutional), located on the north side of Parkway Drive, east of Wickham Road. (Owner - Brevard County) (Applicant - Brevard County Parks & Recreation) (Representative - William Crowe, PBS&J) (P&Z Board - 5/03/07)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of the site plan as depicted on a two-sheet plan prepared by PBS&J, of Melbourne, Florida, Job Number 150469.50, with a signed and sealed date of April 19, 2007, with the following conditions:

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

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

- b. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- c. The proposed buildings shall be substantially consistent with the rendering submitted by the applicant.
- d. The applicant shall construct the curb cut/driveway to Wickham Road prior to the issuance of a building permit for the Phase II Community Center Building, subject to review/permitting by Brevard County.

Mrs. Palmer disclosed that she spoke with Mrs. Pat Poole, who expressed concern about the location of the senior center. Mr. Contreras said he visited the site to look at the equestrian facility maintenance road.

Mayor Goode opened the public hearing.

Bill Crowe, PBS&J, representing Brevard County, was present.

Mr. Contreras displayed the September 2002 "Wickham Park – Conceptual Master Plan", which he has been carrying to homeowners' association meetings in his district. He noted that this plan does not include the senior center. He asked if the temporary access for the equestrian center maintenance road will remain gated.

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Mr. Crowe replied that once the connection to Wickham Road is made, the maintenance road will revert to a seldom used access for the equestrian center.

Mr. Contreras recalled that in 2002 there was discussion that particular maintenance road could be used for special or multiple functions. Mr. Crowe said that in addition to being an access to the maintenance building and the equestrian center, it can also be used as special events access for the park. However, the main points of access will be off Wickham Road.

Mr. Contreras asked the threshold for opening the road. He noted that Parkway Drive is a two-lane roadway, and it is used by pedestrians and bicyclists. There are multiple, seasonal events held at the park, like the moving wall, toy runs, etc. He asked what will cause the temporary gate to be opened and who would make that determination.

Mr. Crowe said that the Brevard County Parks and Recreation Department would make the decision about whether to open the gate for special events. He added that they did show in a study that the additional traffic on Parkway Drive would not be significant.

Carlos Zarate, Brevard County Parks and Recreation Construction, explained that the South Area Parks Operations Manager would make the decision. The road would primarily be used for special events, which are run through the Parks Advisory Committee.

Mr. Zarate confirmed that the special events would have to be primarily associated with the equestrian site. Mr. Contreras asked the frequency. Mr. Zarate replied that he does not know the equestrian center schedule. Mr. Contreras said he is familiar with the schedule; the equestrian center has numerous special events.

William Delauder, 1177 North Highway A1A, said that he is the former president of the senior center. He explained that the Downtown center was razed in 2004. They were not able to obtain desired parking at the old site. And, now that the Downtown site has been leased to the City for parking, it is not available. Board members voted unanimously in 2006 to move the senior center to Wickham Park. Its location is half way between the Palm Bay and Rockledge senior centers. There is no cost associated with the land because it is owned by Brevard County, and there is adequate space, room for additional parking, expansion, etc.

Mr. Delauder reported that they were told the building would be too big for the property located behind the Henegar Center. He noted that there have been discussions about having two senior centers and elaborated on the difficulties encountered with finding enough volunteers/officers to keep one center running.

Mr. Contreras inquired about the demographics and whether there has been a campaign to increase membership. Mr. Delauder replied that there are over 28,000 seniors in the Melbourne area and if the City were divided into thirds, the demographics would be about the same. The membership is probably just under 700. They have not been marketing

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because the facility they are currently in can't handle additional members. Mr. Delauder reported that they have been speaking with Space Coast Area Transit about bus service to Wickham Park.

Mrs. Palmer said she has always been concerned that since the Downtown center closed people in the area would no longer be served. She agreed that people can drive to a remote location; however, many seniors no longer drive for one reason or another. She encouraged Mr. Delauder to continue pushing for bus service and she asked him to work on transportation issues if they find that people in the Downtown area are under-served.

Mr. Delauder pointed out that the senior center has been designed with a loop that will allow for bus service. He added that SCAT has a handicapped bus.

Mr. Thomas asked how many residents would be served at the Wickham Park location if the bus service were taken out of the picture. Mr. Delauder replied as many, if not more, that are being served today.

Mr. Delauder elaborated on their plan to work towards reaching assisted living facilities and a future food program.

Mr. Thomas said that the bus may not be convenient, which means people in the South Melbourne area will be left out. Mr. Delauder replied that when the center was located in Downtown Melbourne only 15 members walked to the site.

Pat Poole, 805 East Palmetto Avenue, provided the background of the Melbourne Senior Center and said it was started by a former County Commissioner many years ago. It was a great project for the Trinity Towers residents and the many elderly people who reside on Melbourne and Strawbridge Avenues. Mrs. Poole commented that many seniors do not drive and they won't ride the bus because they may not want to stay all day. The Downtown location also allows seniors to eat and shop after leaving the center.

Mrs. Poole said that the new senior center was approved as part of a 2000 County parks referendum. Brochures were sent to voters showing the facility at the Henegar Center. People voted to tax themselves for the project. She referenced the parking problems at the Henegar site and reported that City and County staff worked through the issues. The Downtown property belongs to the County and it is a great location for a senior center. Mrs. Poole concluded by asking why Wickham Park will have two centers (senior and community) and Downtown Melbourne will not have any.

Mayor Goode closed the public hearing.

Mrs. Corby asked why the City Council is voting on a senior center that is going into a County Park. Mayor Goode replied that Council is voting on the site plan; the park is located in Melbourne. Mrs. Corby asked if this action would restrict us from placing a senior center in the South Melbourne area. The Mayor replied that if the City had the money, we could; however, the County is building this center and they selected the location.

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Mrs. Palmer stated that she completely agrees with Mrs. Poole and a lot of the people who are disappointed that the County selected this site. However, with all the input the City provided to the County, the County made its decision and they chose this site. Council is simply voting on a site plan. Turning down the site plan won't cause the County to move the site.

Moved by Meehan/Corby for approval of the site plan based upon the findings and conditions contained in the Planning and Zoning Board memorandum.

Mr. Contreras said that the City Council has voiced its opinion with the County. This is the wrong location, and it's taking the cheap and easy route. It is a lose/lose situation for the City and the senior citizens of the City of Melbourne; therefore, he can't support the motion.

Mayor Goode agreed.

The question was called. The roll call vote was:

Aye: Meehan and LaRusso

Nay: Contreras, Thomas, Palmer, Corby and Goode

Motion failed.

Mr. Contreras recommended that the City send a letter to the County Commission requesting that they move the center to the area where it rightfully belongs in Downtown Melbourne. Mayor Goode replied that, without objection, a letter will be sent.

Mrs. Palmer also asked folks to consider that these projects at Wickham Park are taking away the greenery that Wickham Park was supposed to maintain.

20. ORDINANCE NO. 2007-34 (CPA-2006-31) AND ORDINANCE NO. 2007-35 (Z-2006-1089) FOUNTAINS AT LAKE WASHINGTON: Ordinances providing for a Comprehensive Plan Amendment and zoning designation for two parcels consisting of 98.3± acres located west of I-95, north of the northern terminus of Washingtonia Road, the Chestnut Run Subdivision, and the proposed Woodshire Preserve Subdivision. (Owner - Fountains at Lake Washington, LLC) (Applicant/Representative - John H. Evans) (P&Z Board - 1/18/07)
- a. Ordinance No. 2007-34/CPA-2006-31: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential on two parcels consisting of 98.3± acres.
 - b. Ordinance No. 2007-35/Z-2006-1089: (First Reading/Public Hearing) An ordinance providing for a zoning designation of R-1AAA (Single-Family Residential) on two parcels consisting of 98.3± acres.

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Attorney Gougelman read Ordinance Nos. 2007-34 and 2007-35 by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval. There were no disclosures from Council and no comments during the public hearing.

Moved by Contreras/Thomas for approval of Ordinance No. 2007-34 based upon the findings in the Planning and Zoning Board memorandum. Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2007-35 based upon the findings in the Planning and Zoning Board memorandum. Motion carried unanimously.

21. ORDINANCE NO. 2007-36 (CPA-2006-32) AND ORDINANCE NO. 2007-37 (Z-2006-1091) WOODSHIRE PRESERVE: Ordinances providing for a Comprehensive Plan Amendment and zoning designation for 183± acres located west of I-95, at the north end of Washingtonia Road, immediately north of the Chestnut Run Subdivision. (Owner - Woodshire Preserve, LLC) (Applicant - City of Melbourne) (Representative - Candice Hawks, Engle Homes) (P&Z Board - 1/18/07)
- a. Ordinance No. 2007-36/CPA-2006-32: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential on 183± acres.
 - b. Ordinance No. 2007-37/Z-2006-1091: (First Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Residential Estate Use, Single-Family Residential) on 183± acres.

Attorney Gougelman read each ordinance by title. Mrs. Dittmer briefed Council and noted that the Planning and Zoning Board voted unanimously to recommend approval. There were no disclosures by Council and the public hearing was opened and closed without comment.

Moved by LaRusso/Thomas for approval of Ordinance No. 2007-36 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

Moved by Contreras/Palmer for approval of Ordinance No. 2007-37 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

22. ORDINANCE NO. 2007-38 (CPA-2006-38) TEXT AMENDMENT BY PAUL R. RUFO: An ordinance amending Appendix D, Chapter 4, Section 4.04 of the City Code; and amending the Future Land Use map to allow commercial development on the east side of Wickham Road, adjacent to Wickham Park. (Owner - Brevard County) (Applicant/Representative - Paul R. Rufo) (P&Z Board - 1/18/07)

The City Attorney read Ordinance No. 2007-38 by its title. Mrs. Dittmer briefed Council. The following is an excerpt from the agenda report: The Planning and Zoning Board voted

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five to two to recommend denial. Although the Planning and Economic Development staff originally recommended denial of the proposed text amendment, additional correspondence from Brevard County staff has shown their concurrence with the applicant's request. Therefore, City staff no longer recommends denial of the request.

The public hearing was opened and closed without comment.

Moved by Contreras/Meehan for approval of Ordinance No. 2007-38 based upon the findings contained in the Planning and Economic Development staff memorandum. Motion carried unanimously.

23. ORDINANCE NO. 2007-39 (CU-2007-02/SP-2007-02) BREVARD COUNTY SARNO LANDFILL EXPANSION AREA: (First Reading/Public Hearing) An ordinance granting a conditional use on a 211.322±-acre site with modification and site plan approval on a 9.5-acre portion zoned M-1 (Light Industrial) to allow the expansion of an existing Solid Waste Class III Landfill, located south of Sarno Road, east of North Drive, and west of Wickham Road. (Owner - Brevard County Board of Commissioners) (Applicant/Representative - Brevard County Solid Waste Management Department) (P&Z Board - 5/03/07)

Attorney Gougelman read the ordinance by title. Mrs. Dittmer reviewed the agenda report and advised that the Planning and Zoning Board voted unanimously to recommend approval. There were no disclosures by Council.

Mayor Goode opened the public hearing.

Euripides Rodriguez, Brevard County Solid Waste, reported that the Board of County Commissioners conducted a workshop last year. At that meeting, he informed the Board that the Sarno facility was filling rapidly because of the hurricanes. The Board gave direction to proceed with the Highway 192 site located on the west side of Brevard County and, in the meantime, get a portion of the Sarno landfill permitted to buy sufficient time to start construction of the 192 site. Mr. Rodriguez said that they believe this action will buy just enough time required. However, he cautioned that the life of these facilities is variable, based on population, economics, construction, etc. There was talk that the Sarno facility would close in 2001 and that later changed to 2016 without changing the footprint of the facility. After the hurricanes, the closing date changed to 2010/2011. These figures can change at any given time and any plans for closure of a facility have to be approved by the Department of Environmental Protection.

Mrs. Palmer asked what will happen to the stormwater pond. Mr. Rodriguez replied that it was mitigated long ago. The pond will be filled and used for landfill and dry retention will be provided between the landfill and the internal roadway.

Mrs. Palmer asked if the County is considering negotiations to purchase the private landfill located adjacent to the property on this agenda. Mr. Rodriguez replied no and said those negotiations were discontinued right after the County purchased "that 68 acres" and there was public outcry. Mrs. Palmer asked if there are plans once again to look at purchasing that property. Mr. Rodriguez replied, at this point, no.

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Mr. LaRusso referenced the letter the City received (dated May 2 from Deborah Lusth, property manager, Dead River Properties) indicating serious things that happened on their property as a result of the landfill. He asked Mr. Rodriguez if he is familiar with Dead River Properties.

Mr. Rodriguez said he is familiar with a property towards the east. He talked to the manager of that property and supposedly a piece of a tree from the mulching operation fell on his roof and caused approximately \$700 in damage. He added that it is his understanding that the insurance company took care of it.

Mr. LaRusso clarified that the amount was \$740 and the damage was caused by metal debris thrown from the dump grinder onto the roof of their building. Mr. LaRusso said it is disturbing to see these things. He asked if any steps are being taken to ensure these same mistakes don't happen again.

Mr. Rodriguez said that, although he is not familiar with the specific letter that was written, he does understand the concerns. He explained that once the mulching operations get close to the edge of the property, the possibility of something being flung from that operation increases. The best way to handle that is to place the mulching operation in the middle of the landfill.

Following a brief discussion, Mr. Rodriguez said he does not have a permit to operate the mulching at ground level. The only area remaining is the area south of the landfill and it is not permitted for that activity. The County hasn't applied for a permit in this area because they are trying to show that they intend to close this operation. The less permits they have outstanding on this property, the better it will be to close it out in the future. Mr. Rodriguez stated that if he applied for a permit through the City to allow this operation in the south area, Wuesthoff Hospital would probably not be happy.

Attorney Gougelman asked if the conditions in the ordinance, especially the time of closure, are agreeable with the County. Mr. Rodriguez replied that the closure date is based on current projections; however, their engineers have been wrong before. He noted that they may need to return to the City and ask for a couple more months. Attorney Gougelman asked if, other than requesting a short extension, the conditions are acceptable. Mr. Rodriguez replied yes.

Mr. Contreras asked Mr. Rodriguez how long the County has been in possession of the alternative disposal area. Mr. Rodriguez replied since the early 1990s. Mr. Contreras pointed out that the County has had a decade and a half to get that site operational.

Mr. Contreras said that the life of the landfill was previously reduced to 2011. In the meantime, the City's western borders have increased and there are more inhabitants in this area. Through no fault of the County or the City, nature has taken its course and 2011 looks like a good date for him; therefore, he would support a motion to not go past 2011.

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Moved by Palmer/Contreras to deny this request (Ordinance No. 2007-39.)

Mrs. Palmer said that the landfill is in her district. She reported that regularly they are subjected to smoldering mulch fires, noxious odors from decaying mulch and dust. Bulldozers push dirt all day and, with the prevailing winds, dirt and dust cover the City. The site on this agenda is a stormwater pond, which is the least noxious part of the landfill. A 105-foot dirt and mulching operation will make it more and more difficult for people in that area to breathe, keep their property clean, etc.

Mrs. Palmer said that the landfill was scheduled to close in 2001 and someone made the decision for the County to continue at this location. She stated that we have County property in the City and the decisions the County is making are in the best interest of the County. The City Council has to decide what is in the best interest of the citizens of the City of Melbourne. She asked Council to not allow this expansion. The numbers do change. The original closure date was 2001 and in the meantime, people have moved around the landfill. And, she suspects that, at a later date, the County will purchase the adjacent private landfill and continue its operation.

Attorney Gougelman asked Council to succinctly state a reason for denial. Mrs. Palmer said that denial is due to health and safety of the surrounding area.

The question was called. Motion carried unanimously.

24. ORDINANCE NO. 2007-40: (First Reading) An ordinance amending Chapter 10 of the City Code, entitled "Community Planning and Development," as it relates to the Architectural Review Board; revising the composition of the board; and providing that if an applicant violates the terms and conditions of a certificate of appropriateness, the property may be referred to the Code Enforcement Board for action.

The City Attorney read the ordinance by title.

Mrs. Palmer left the Council Chamber at 8:55 p.m.

Moved by Contreras/LaRusso for approval of Ordinance No. 2007-40. Motion carried unanimously (six votes).

25. ORDINANCE NO. 2007-41: (First Reading) An ordinance amending Chapter 3 of the Code of Ordinances, entitled "Alcoholic Beverages;" amending Section 3-1.1 as it relates to hours of sale for alcoholic beverages. (Requested by City Council 5/8/2007)

Attorney Gougelman read Ordinance No. 2007-41 by title. Mayor Goode said this item is not a public hearing and Mrs. Poole has asked to speak. Moved by Thomas/LaRusso to allow Mrs. Poole to speak. Motion carried unanimously (six votes).

Mrs. Palmer returned to the Council Chamber at 8:57 p.m.

Pat Poole, 805 East Palmetto Avenue, said she is not opposed to drinking; however, she

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resents the fact that we have to imitate Palm Bay, West Melbourne and unincorporated Brevard County. She noted that they (West Melbourne) have a midnight closing and to conform, Melbourne should also close at midnight instead of 2:00 a.m.

Mrs. Poole stated that she would like to see no alcohol sales on Sundays so we can be healthier, spend time with our families and enjoy a true day of rest.

Moved by Meehan/LaRusso for approval of Ordinance No. 2007-41.

Mr. Contreras said he is supporting this because we have had annexation activities that have impacted or would impact the livelihood of businesses. The City has been providing due diligence by assigning similar County zoning on annexations and we should continue by according business owners similar regulations on their property.

Mrs. Palmer stated that she does not believe this action will encourage or discourage consumption of alcohol. She added that she believes it is a matter of businesses being able to compete.

Mayor Goode said that we have had businesses raise concerns about coming into Melbourne. Several wanted to be granted extended hours without allowing other businesses in Melbourne the same.

Mr. LaRusso said he is no one's moral judge. The City Council is doing this for business. He agreed that the change won't encourage or discourage drinking.

The question was called. Motion carried unanimously.

Moved by Contreras/Meehan to convene as the Melbourne Downtown Community Redevelopment Agency for Item #26. Motion carried unanimously.

26. COUNCIL ACTION RE: Approval of grant award recommendations for the Facade Improvement Pilot program and authorization for the City Manager to execute rebate agreements with Railroad Emporium, LLC - \$20,000; Susan C. Brand - \$20,000, and Cards & Coins of Brevard - \$10,000.

From the agenda report: City Council approved funding for the Facade Improvement Pilot Program on September 16, 2006 from future CRA project reserves, and \$50,000 is available to provide grant assistance at this time. City Council also reviewed the guidelines and procedures for the program on September 16, 2006.

This is a request for City Council, acting as the Melbourne Downtown CRA, to approve Facade Improvement Program grant reimbursements, for the following applicants at the recommended funding levels:

Susan S. Brand	818-824 E. New Haven Avenue	Not to exceed \$20,000
Railroad Emporium, LLC	924 E. New Haven Avenue	Not to exceed \$20,000
Brevard Cards & Coins, Inc.	724 E. New Haven Avenue	Not to exceed \$10,000

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Additionally, this request is for authorization for the City Manager to execute Facade Improvement Program Reimbursement Agreements with program applicants as approved by Council.

Mayor Goode said that Laura Coffey, Railroad Emporium, has asked to speak. Moved by Meehan/Contreras to allow Ms. Coffey to speak. Motion carried unanimously.

Laura Coffey, 924 East New Haven Avenue, said she was available for questions.

Moved by Meehan/Thomas for approval of the grant recommendations for the Facade Improvement Pilot Program and authorization for the City Manager to execute rebate agreements with Railroad Emporium, LLC for \$20,000, Susan Brand for \$20,000, and Brevard Cards & Coins, Inc. for \$10,000. Motion carried unanimously.

Moved by Contreras/LaRusso to reconvene as the City Council for the remaining agenda items. Motion carried unanimously.

27. COUNCIL DISCUSSION RE: Proposed ordinance amending Chapter 30 of the Code of Ordinances, entitled "Taxation," amending Article II, levying a utility tax on water service.

From the agenda report: Staff will be bringing forward suggestions for Council's consideration to provide funding to meet increased expenditures necessary to provide the current level of service to Melbourne citizens. When developing a budget a basic principle is to match recurring expenditures with recurring revenues. In the General Fund the most significant cost is labor. Typically, property tax revenues fund the increased labor costs associated with contractual commitments.

A potential new revenue source for the General Fund is the utility tax on water sales in Melbourne. Several other jurisdictions have been levying a utility tax on Melbourne water sales in their jurisdictions for many years. This tax is authorized by State Statute for municipalities as a means to generate local revenues. Melbourne currently levies a 10% utility tax on electricity service and metered and bottled gas. The suggestion is to extend this utility tax to water service as permitted by State Statute. This alternative revenue would generate about \$1,000,000 annually.

In implementing this tax, the recommendation is to use it as a substitute for the amount of revenue that would otherwise be provided by some modest increase in the property tax rate when preparing next year's budget. If this utility tax were implemented, staff would recommend limiting the property tax revenue next year to the amount generated by use of the rolled back property tax rate. The rolled back rate is the rate necessary to generate the same tax dollars as the current year, excluding construction and annexation.

The City Manager provided an overview. He noted that the Legislature may or may not limit other revenues. The Legislature is trying to limit impact fees and land based charges such as MSTUs, assessments, etc. We also have the additional restriction in Brevard County of not being allowed to increase the property tax more than 10% above

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the roll back. Staff is trying to put together a budget that gives us the greatest allowance to move forward with projects and services that have been funded in the past. We are not trying to find new things to fund.

If the Legislature rolls back revenue, funding will be scarce. This idea provides an alternative to continue programs that Council has authorized in the past. If this action is taken and the Legislature rolls back the rate, there will still be difficult decisions. The idea to substitute this for the amount of revenue that would otherwise be provided by modest increase in property tax rate results in a zero percent net increase. He concluded by saying this is intended for Council discussion.

Mayor Goode pointed out that this is a possible future source of revenue. Today the General Fund budget is \$65 million and \$46 million of that is salaries. There are some costs that can't be cut – insurance, gasoline, etc. It's possible that the Legislature will whack \$4 million from our budget.

Mr. Contreras said he appreciates the forward thinking in response to the Legislature's action. He referenced recent Council meetings and said that demands are increasing; there are a lot of "wants." He noted that he would appreciate input from our citizens in a workshop meeting. The idea is not to stir a frenzy, rather ask citizens to provide a recommendation on cuts.

Mrs. Palmer said that she will say what the people she represents think. Water is a necessity and it is already expensive to some people. There are some people who have two incomes who are barely able to pay their mortgage. Their taxes, groceries and gas continue to go up. She pointed out that it is quite ironic that we decided to give all officers patrol cars and allow them to live as far away as the County borders. Now we are suggesting that we tax the water that our citizens must have.

Regarding citizen input, she said that she watched the County dog and pony show, which amounted to people pleading to not have their funding cut. She stated that the City knows how to prioritize. We need police, fire, roads and drainage. We know that and we don't need our residents to tell us that. Mrs. Palmer said she is blue collar and so are many people in the City. They expect the City to not gouge them on necessities; therefore, she won't support this.

There was no further input and no direction.

28. COUNCIL ACTION RE: Board Appointments

- a. Building and Construction Advisory Committee - appointment of two members.

Moved by Meehan/Contreras to reappoint Ron Marcucci and Vaughn Holeman. Motion carried unanimously. (5/27/2007 through 5/26/2010)

- b. Firefighters' Pension Plan Board of Trustees - appointment of fifth member.

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Moved by Thomas/Meehan to reappoint Tom Flamm. Motion carried unanimously.
(6/10/2007 through 6/9/2009)

- c. Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee - appointment of four regular members.

Moved by Contreras/Meehan to reappoint George Alexander, Gene Davis, Bobby Bechtel and Link Johnsten. Motion carried unanimously. (6/12/2007 through 6/11/2009)

29. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Bill Cole, 2280 Royal Poinciana Boulevard, asked for information on the number of tickets written on Royal Poinciana Boulevard in 2006 and 2007. He informed Council about his experimentation with a video camera to capture speeders and his intent to borrow a radar gun to capture speeders. He stated that his calls have gone unanswered and speeders continue down his street. Mr. Cole said he will continue gathering facts until speed enforcement is properly conducted on his street.

Brief discussion followed. In response to Mrs. Palmer, Deputy City Manager Howard Ralls said he will investigate traffic calming devices for this roadway.

Mr. Thomas said that important strides have been made to improve the relationship between the City and the police and fire unions. He reported that although Andy Hament (City's labor attorney) has been a strong negotiator, he is sending a wrong message to our employees.

Moved by Thomas/LaRusso to terminate Andy Hament as the City's attorney in labor negotiations. (See amendment below.)

Mayor Goode said that a labor attorney is not an everyday variety attorney. He asked who else in this neighborhood could be considered.

Mr. LaRusso said he will support removing Mr. Hament from the negotiating table. He recalled his previous effort to take this action and expressed concern that "all of a sudden, Mr. Hament is the only attorney in Florida that can negotiate these contracts."

Mrs. Corby pointed out that the City is the client and Council sets the tone. It is Council's responsibility, together with the City Manager, to decide the type of negotiations. She stated that Council Member Thomas is doing this only as an effort to win support from the Fire and Police Departments. She asked Council to consider what is best for the entire City.

Mr. Thomas said if he wanted to gain support, he would have taken a different stance than he did tonight. Continuing, he said that he was aware of the previous relationship between Mr. Hament and the police union. Following recent negotiations, Mr. Thomas said he was informed that Mr. Hament's tone and tactics have continued. Mr. Thomas

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stressed that he doesn't want to ruin the positive attitude that has been created over the past few months.

Mr. Thomas suggested that Attorney Gougelman lend his expertise until the City finds a replacement. Mr. Thomas added that City staff has done an outstanding job; the concern is with Mr. Hament. He noted that it's not what we say, but how we say it and what we say to the police and fire unions is of critical importance.

Mrs. Corby recommended that Council speak to Mr. Hament, Mr. Schluckebier and Mr. Gougelman and set clear directions for the police and fire union negotiations. She commented that this action this evening is unwarranted.

Mr. Schluckebier recommended that rather than taking direct action, Council conduct an executive meeting to address these issues and talk through strategy. That type of session could be set three weeks from now and any further negotiations with the police will wait until Council addresses staff in that meeting.

Mrs. Palmer said that she has been in a number of shade meetings with Mr. Hament. His actions have been at the direction of Council; they have not been his personal decisions. She added that although not all Council Members agreed, Council directed Mr. Hament. Mrs. Palmer recommended a meeting be held before we dismiss Mr. Hament. She added that if there is such disrespect for him and no possible chance of meaningful negotiations, then we do need to bring someone else in – if Council agrees. She stressed that we can't have a City run by unions.

Mr. LaRusso said he has not been on the "agreeable" side during shade meetings and he has been the recipient of harsh language from Mr. Hament. He added that he will make this personal for the people he represents. He was previously told that Mr. Hament's tone would change and he hasn't seen that. Mr. LaRusso asked that the motion be amended to remove Mr. Hament from the negotiating table. The Vice Mayor clarified that Mr. Hament can be our legal staff for the time being, but he should not sit at the table.

Mr. Thomas said that is a step in the right direction.

The maker/seconder amended the motion to remove the City's labor attorney, Andy Hament, from the Police Benevolent Association bargaining table.

Mrs. Palmer asked the repercussions of stopping negotiations until we determine what the Legislature is going to do.

Mr. Thomas said his contention is the tone that was set – not what was offered, or not offered.

Mrs. Palmer said she would support changing attorneys, but not without hiring another labor attorney.

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Mrs. Corby asked why this action is being taken this evening. Mr. Thomas said he spoke with the labor leader this past week. Mrs. Corby said she didn't know Council Members were in a position to talk to union representatives. Mr. Thomas asked Mrs. Corby if she is saying that she never speaks to Mr. Tolley (fire union) or Mr. Williams (police union).

Mr. Contreras said that based on this discussion, Mr. Hament may say, "Have a nice day." He agreed with Mrs. Palmer that we need to shore up footing now in terms of finding a new labor attorney.

Attorney Gougelman said Council's confidence in our attorney is number one. He suggested that Council continue with Mr. Hament in the negotiations and he (Gougelman) would sit in and observe what is going on. Level proceedings may be occurring, but the personalities may be like oil and water. Mr. Gougelman stated that he has every confidence in Andy Hament as the City's labor attorney and that he is negotiating in a way instructed by the City. Before going further, he recommended that a shade meeting be conducted and Council be brought up to speed.

Mayor Goode called the question on removing Andy Hament from the negotiation table and that he serve in an advisory position with the negotiation team. The roll call vote was:

Aye: Contreras, Thomas and LaRusso

Nay: Meehan, Palmer, Corby and Goode

Motion failed.

Mayor Goode cautioned that he could change his vote next week; his position is not set in concrete. He also pointed out that conducting union negotiations is not like going to the prom. Andy Hament is working for the City Council and the taxpayers. We have to drive a bargain that will not only appease the union, but also the taxpayers.

Moved by Palmer/Meehan to direct City Attorney Paul Gougelman to sit in on the PBA negotiations in a monitoring position and to schedule a shade meeting on PBA negotiations as soon as possible.

Following a brief discussion, Mr. Contreras recommended that one round of negotiations be conducted with Attorney Gougelman in a monitoring position before the shade meeting is conducted.

The maker/seconded agreed to include that amendment in the motion.

The question was called on the motion and the amendment. Motion carried unanimously.

Mr. Contreras recommended that, for information purposes, staff determine what labor attorneys are available and their rates. Mayor Goode said that he believes that direction is understood.

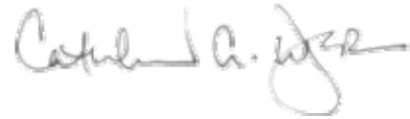
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Mr. Thomas said he thinks it sends the wrong message when Council takes a contentious issue and attacks each other personally. He stated that he doesn't appreciate the comment that was made and added that Council needs to maintain decorum and treat each other with respect.

30. ADJOURNMENT

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

The meeting adjourned at 10:00 p.m.



City Clerk – 6/5/2007

Approved by Council: _____