

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 24, 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 Cheryl Palmer gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	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

Absent: Mark LaRusso Vice Mayor, District 2 (family business)

4. Proclamations and Presentations

None.

5. Approval of Minutes – July 10, 2007 Regular Meeting

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

6. City Manager's Report

Council Member Joanne Corby referenced the proposed ordinance, which will amend the City Code as it relates to vacation of rights-of-way and easements. She asked the City Attorney if he found any information at the recent conference he attended that might impact this item. Attorney Gougelman replied that he expected a good presentation on this issue; however, the discussion focused on plat approvals rather than abandon and vacate requests. City Manager Jack Schluckebier confirmed that the ordinance will appear on the August 14 agenda for Council consideration.

Mrs. Corby mentioned the construction site plan review process flow chart provided by the Engineering Department and asked if this will appear on a Council agenda for discussion. The City Manager explained that is an internal process; it is not set out in Code. The item can return if Council desires; however, he is not sure to what end. Following discussion, Mr. Schluckebier said that there was a follow up report on the Planning and Zoning review

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process. (The Planning and Economic Development flow chart, which outlines Council's involvement, appeared in the July 10 City Manager's report.)

Mrs. Corby asked the definition of a supermajority vote. The City Manager said that generally supermajority is defined as a majority plus one; however, there are circumstances where a supermajority is specifically defined to be more. Mayor Goode added that one example is the 6/7 rule in the zoning petition process. It requires a 6/7 vote of Council to approve a zoning ordinance when a valid petition has been submitted.

Mrs. Corby asked the definition of supermajority for adoption of the proposed millage rate (action taken at the July 23 budget workshop meeting). Mr. Schluckebier said that definition is specifically set out in state law; in Melbourne's case, supermajority is five.

7. Public Comments

Bruce Mochwart, 2235 Canopy Drive, Code Board member, expressed disappointment that Council did not take any action recommended by the Code Board to change the process of appointing the chair and vice chair to the City's quasi-judicial boards. (At the July 10 Council meeting, Council opted to make no change to the current Code that outlines the process). Mr. Mochwart asked Council to review and discuss this issue as a courtesy to the Code Board.

Mr. Mochwart referenced the recent e-mail he sent to City Council regarding the rescission/reduction of Code Enforcement fines. He asked Council to look closely at cases that do not receive a unanimous recommendation from Code Board and cases where the fine was reduced to zero. A reduction to zero means that City costs were not recovered. He recommended those items be removed from the consent agenda and investigated further.

NEW BUSINESS

8. ORDINANCE NO. 2007-42 (Z-2007-1110) CARL C. GAY: (First Reading/Public Hearing) An ordinance changing the zoning from R-1AA (Single-Family Low Density Residential) to C-1 (Neighborhood Commercial) on a 0.58-acre parcel, located on the north side of Sarno Road, east of Apollo Boulevard, and west of Kelmore Drive. (Owner/Applicant/Representative - Carl C. Gay and Sylvia F. Gay) (Returned by Council to the P&Z Board - 6/12/07) (P&Z Board - 7/05/07)

Attorney Gougelman read Ordinance No. 2007-42 by title.

Mrs. Dittmer briefed Council. The following is an excerpt from the agenda report: *The property has been used in the past for a children's therapy center under a transitional zoning allowance and has been upgraded to meet commercial standards. A potential buyer would like to establish a daycare facility on the property.*

Single-family residences are located to the east and north of the property and multi-family units are under construction to the west. Due to a City Code requirement that a property

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under 40,000 square feet in size can only request a rezoning to an existing, adjacent zoning district, the property is only permitted to request a C-1 zoning. R-P (Residential Professional) or C-1A (Professional, Offices and Services District) zoning would be more appropriate in this area.

A change to C-1 zoning could allow higher intensity uses such as retail and restaurant uses, which would have an adverse impact on the surrounding neighborhood. Professional offices or uses of a low intensity nature could be compatible with the neighborhood. Based upon further consideration and review of the circumstances, City staff does not recommend approval of the request; however, staff would recommend a change to the Zoning Code to allow for less-intensive rezoning requests where the property is smaller than 40,000 square feet in size.

The Planning and Zoning Board initially recommended approval. City Council returned this item to the board because of an error in the public hearing notice. After consideration of potential impacts to the neighborhood with the proposed C-1 zoning, City staff recommended denial to the Planning and Zoning Board when it returned. After reconsidering the request and hearing testimony from the public, the Planning and Zoning Board also recommended denial.

A petition against the rezoning request was submitted by surrounding property owners. City Code provides that a petition signed by the owners of more than 20% of the property within 500 feet of the proposed action shall require a 6/7 vote by City Council during the second reading to approve the request. The petition has been signed by 42.4% of the property owners within 500 feet of this request; therefore, approval will require a 6/7 vote at the second reading of the ordinance.

Mrs. Palmer asked what types of uses are permitted in the C-1 zoning district. Mrs. Dittmer replied retail, small shopping center, convenience store, hospital, restaurant, hotel, motel, and bank. She added that these uses are fairly high traffic generators. Mrs. Palmer asked Mrs. Dittmer if, in her opinion, C-1 is appropriate for the area. Mrs. Dittmer replied it is not and added that the character of the area is primarily residential. There is a mixed land use that may allow professional office uses; however, C-1 zoning is too intense for the neighborhood.

Attorney Gougelman asked Mrs. Dittmer to define what she means by “the area.” Mrs. Dittmer explained that when reviewing a request, staff looks at the surrounding area. With regard to this request, “area” is from Apollo Boulevard east to the railroad tracks along the north side of Sarno Road. This area is residential. A multi-family condominium project is under construction adjacent to the property. Sarno Road acts as the dividing line; there are some commercial uses on the south side of Sarno Road.

Mayor Goode opened the public hearing and called for disclosures. There were no disclosures from Council.

Gary Frese, attorney representing Carl and Sylvia Gay, stated that the rezoning will allow a use to continue that has been on the property for the past 15 years. The owners

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currently have an occupational license for a medical daycare facility. They want to legitimize the zoning because it is considered a non-conforming use. Attorney Frese commented that they don't see this as a change in planned use. He agreed that C-1 zoning is more intense than they need; however, this is all that is available based on the size of the property. Mr. Frese said they are open to any conditions Council would like to place on this property.

Mr. Frese displayed photographs of the property and made the following comments: The property has a two-way driveway. Some Council Members are concerned about vehicles stacking on Sarno Road. The days of dropping children off are gone. For safety and security, parents park and walk their children into the center. The property meets all the physical requirements for C-1 zoning. They need to reconfigure parking; staff has assured them that they can get two more spaces on the property.

Mr. Frese said that the owner would stipulate no retail, no hotel, no motel, etc. He acknowledged that they want to stay away from contract zoning; however, he asked for the same consideration that was given to the "Ullian" rezoning (reference Ordinance No. 2007-07, February/March 2007), which limited that property to professional uses only.

Regarding (Kelmore) Drive, it is a dirt easement located immediately to the east used by adjacent residents to access their homes. Some of the residents feel that use of the subject property infringes on their use of the easement. The applicant would be glad to install "private road/no trespassing" signs on Kelmore. Additionally, he pointed out that Kelmore can't be accessed from the subject property.

Mr. Frese summarized by saying that Sarno Road is a major arterial; traffic on Sarno Road is busy. Because the use on the subject property is not changing, they do not think it will impact the existing situation.

Mr. Frese confirmed for Mrs. Palmer that curbing on the subject property does not allow for vehicular access to Kelmore Drive.

Attorney Gougelman said that City staff believes the site is a non-conforming use that was abandoned; however, the applicant has taken the position that it has not been abandoned. Mr. Gougelman clarified that is not the issue. The issue is whether the rezoning from R-1AA to C-1 is appropriate, not whether it would be proper to continue an existing use.

Mr. Frese replied that is why he mentioned the "Ullian" rezoning. They would be agreeable to C-2 zoning with a limitation to professional/daycare use only.

Sid Johnson, 1725 Bluebird Court, reported that he was asked by Mr. Frese to observe Children's Country Club located at 2165 Sarno Road. This daycare is located across from Sarno Plaza at Sarno/Croton Roads. He explained that he observed the site on this date from 7:00 a.m. to 9:00 a.m. and again from 4:00 p.m. until 6:00 p.m. He listed the number of drop-offs during the hours and stated that three parking spaces were needed in the morning and four were required in the afternoon. During the two hour period in the

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morning 54 children were dropped off. All parents parked and walked their children into the building. And, there was no stacking of vehicles on Sarno Road.

In response to the Mayor, Mr. Johnson said that the Gay's center is presently licensed by the State of Florida for 35 children.

Mrs. Palmer asked Mr. Johnson if he observed how many employees parked. Mr. Johnson said there were a total of 10 spots needed, which provided spaces for daycare vans, employees and visitors. Mrs. Palmer said she lives near this facility and she believes that staff parks across the road at Sarno Plaza. Mr. Johnson said he did not observe that.

Mrs. Palmer asked how many employees will work at the Gay's facility and Mr. Johnson replied five. In response to Council, Mrs. Gay (from the audience) indicated that they are licensed for 36 children, but they typically have between 22 and 26.

Mr. Contreras asked Mr. Frese to elaborate on the parking reconfiguration. Mr. Frese said they will end up with 14 spaces, which are required. There will be five employees – leaving nine spaces open. Mr. Frese pointed out that based on Mr. Johnson's observations, three to five spaces will be plenty to accommodate the flow of children.

Bill Insko, 949 Kelmore Drive, explained that he also visited Children's Country Club on Sarno Road. He spoke to the owner of the facility who indicated they are at 70% capacity and they occupy 2165 through 2189 Sarno Road. This is a long parking area that does not require drivers to pull in/back out. This is different from the Gay property.

Mr. Insko reported on two other daycare centers in the area and said they have three daycare centers within a one-mile radius. Sarno Road is extremely busy. When school is not in session traffic flows; however, when school is in Sarno Road bottlenecks at Apollo Boulevard. Mr. Insko continued discussing the heavy traffic on Sarno Road, traffic accidents and the difficulty in accessing Sarno. He noted that people on Kelmore Drive object to the rezoning based on previous experience with the daycare center. Although the center doesn't have vehicular access to Kelmore Drive, foot access is unrestricted. Consequently, folks would park on Kelmore and then walk to the daycare center.

Mrs. Palmer asked if parents presently park on Kelmore Drive. Mr. Insko said he is referring to when the facility was in operation. He commented that it has not operated as a daycare for at least 10 years.

Mrs. Palmer asked if they had the same type of driveway when the facility was operating. Mr. Insko said it is identical to the driveway they have today.

Mr. Contreras stated that the speaker has indicated the facility has not operated for the past 10-plus years, yet there is a traffic problem on Sarno Road. Therefore, it is likely the roadway has been congested for that period or longer. Mr. Insko said that traffic has increased, especially since Hidden Harbor, McDonalds, etc. developed.

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Regarding parking on Kelmore Drive, Mr. Contreras said that is a management issue. Additionally, he noted that he can't rationalize a business being in operation for 10-15 years, yet now it is being pointed to as the cause of traffic congestion and accidents. Mr. Insko replied that the center has not been in business for the last 10 years. There have been no children or staff on the property.

Jerry Meyer stated that the issue is whether C-1 zoning is appropriate, not the number of daycare centers in the area. He pointed out that the Planning and Zoning Board recommended denial; the board did not believe the property was appropriate for C-1 zoning. Mr. Meyer said that the center has been abandoned for closer to five years, not 10 years. He confirmed that no children have been on the site.

Continuing, Mr. Meyer commented on the following: he finds no advantage to spot zoning and the domino effect that usually follows; after the townhomes develop there will be 43 residences in this area; the proposed daycare is not compatible with the neighborhood; there are many daycares available in the vicinity; parking has never been adequate on the property; and in the past they were inconvenienced by people parking on Kelmore.

Attorney Gougelman asked Mr. Meyer to state his address and the location. Mr. Meyer said he lives at 979 Kelmore Drive, adjacent to the property. He confirmed that he sees the facility every day and there has been no activity on the property for the past five years.

Attorney Gougelman repeated that the real issue is whether the property should be rezoned to C-1. He cautioned Council not to get tripped up on this specific use, although this use is important because that is how the applicant has indicated the property will be used. But, there are a whole host of other uses allowed with C-1 zoning.

Marti Meyer, 979 Kelmore Drive, stated that she is opposed to the change in zoning and the use of the property for a daycare. She said that when the daycare was operating, the residents encountered daily problems with parents parking on Kelmore. She commented that their community has 33 homes and that number will grow to 43 after the townhomes are built. She finished by saying the proximity of commercial zoning on the south side of Sarno Road should have no bearing on "spot zoning" for this property.

Attorney Gougelman said there was a comment made about three other daycare facilities being located on Sarno Road. He asked Mrs. Dittmer, from a planning perspective, if she focused on this neighborhood or the full length of Sarno Road from U. S. 1 toward Eau Gallie Boulevard. Mrs. Dittmer replied that staff's review of this request was in this specific surrounding area, generally bounded by Apollo and the railroad tracks along Sarno Road. She discussed the location of the other daycare centers mentioned, and noted that the other daycare facilities can't be compared to this location.

In response to the City Attorney, Mrs. Dittmer said that the daycare facility at 2165 Sarno Road is surrounded on the east and west sides by commercial uses; there are residential uses to the south. Attorney Gougelman asked if that site is distinguishable from the

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subject site. Mrs. Dittmer said definitely and added that area of Sarno Road is more commercial.

Attorney Gougelman included Appendix B, Zoning Code; Appendix D, Land Development Regulations; Planning & Zoning file; and the City Clerk's file in the record.

Mrs. Palmer referenced the uses allowed in a C-1 zoning district and pointed out that this property would not necessarily remain a daycare facility.

Mayor Goode asked if C-1 zoning would be considered spot zoning. Mrs. Dittmer replied that C-1 zoning is located on the south side of Sarno Road.

Attorney Frese returned to the podium and pointed out that C-1 zoning is the only zoning they can apply for according to our Code. He repeated that they would agree to a childcare/professional use only. He concluded by providing the history of the operation of the daycare center. He noted that since 2003 there have been minimal children at the facility, but it has been operating.

Attorney Gougelman asked if the applicant would limit the hours of operation; impose standards, such as no left in/no left out; and prohibit certain uses. He added that the City's ability to prohibit uses is limited. And, he is not sure how this property is distinguishable from the "Ullian" property referenced by Mr. Frese. Attorney Gougelman explained that prohibiting a long list of uses becomes similar to contract zoning. It opens the question that if we are prohibiting that many uses, then why are we approving the rezoning.

Mr. Frese replied that the applicant would like to continue using the property as it is used now. They would take C-1 zoning and would submit to any conditions that would not disallow their current operation.

Mr. Thomas asked what the property was zoned when the Gays purchased the property. Mr. Frese replied R-1AA. In response to Mrs. Corby, Mr. Frese said they only have a couple of children at the center now.

Mayor Goode closed the public hearing.

Mrs. Palmer said she would like to move for denial. Attorney Gougelman asked that the reasons for the denial be provided. Mrs. Palmer said she is opposed based on the Planning Director's comments and C-1 zoning being inappropriate for the site.

Moved by Palmer/Thomas for denial of Ordinance No. 2007-42. The roll call vote was:

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

Motion carried unanimously.

9. ORDINANCE NO. 2007-56 UTILITIES: (Second Reading/Public Hearing) An ordinance

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amending Chapter 32, Section 32-49 of the City of Melbourne Code, entitled “Utilities,” by requiring reimbursement to the Water and Sewer Fund for the cost of making sewer service available when a connection is made to the eight-inch sewer main located along West and East Drives. (First Reading - 7/10/07)

The City Attorney read the ordinance by title. Mayor Goode opened the public hearing. There were no comments and the public hearing was closed.

Moved by Contreras/Thomas for approval of Ordinance No. 2007-56. The roll call vote was:

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

Motion carried unanimously.

10. COUNCIL ACTION RE: Contract award for the construction of a multi-purpose building at Southwest Park, Project No. 70006, P.W. Hearn, Inc., Cocoa, FL - \$435,509; and transfer of \$121,436 from the McGrath Field Restroom/Concession Project to supplement this project budget. (Postponed - 7/10/07)

City Engineer Jenni Lamb pointed out that the agenda package contains information about pricing and a comparison of a metal structure versus a concrete block structure.

Moved by Palmer/Meehan for approval of the construction contract with P.W. Hearn, Inc. in the amount of \$435,509 for the Southwest Park Multi-Purpose Building and a budget transfer of \$121,436 from McGrath Field Restroom/Concession Project No. 70107 to supplement this project budget. Motion carried unanimously.

11. ORDINANCE NO. 2007-58 WATER & SEWER SERVICE RATES: (Second Reading/Public Hearing) An ordinance amending Chapter 32 of the City of Melbourne Code, entitled “Utilities,” adjusting water, sewer, and reclaimed water service rates; removing fire hydrant rental charges; eliminating customer requested turn-on and turn-off service fee and eliminating guaranteed water and sewer revenue charges. (First Reading - 7/10/07)

The City Attorney read the ordinance by its title. Mayor Goode opened the public hearing.

Dale Young, 2401 Dairy Road, said that the call for a five percent increase in water and sewer rates can only be seen as excessive since it has no connection to the consumer price index, growth, or any other consumer income chart. For many Melbourne water customers there will be no income increases this year. He reported that for the past five years Melbourne has realized over \$40 million in clear net profit from the water rates. Melbourne also has an additional \$91 million in investment accounts. Melbourne intends to bond these revenues in two issues of \$18.8 million and \$35 million. Water customers get to pay for water twice – for the water they use and again for the bond payment.

Mr. Young said if the \$40 million in profits had been applied to yearly maintenance and

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replacement, there would probably be no need for these yearly increases now. The rate consultant has proposed that the reason for the increase is projected increases in water usage have not developed. That hypothesis is not borne out by our bookkeeping and by usage figures. In every year from 2002-2006 we have had increases in accounts and usage figures. Mr. Young asked whether improbable figures were used in the beginning knowing they would be unattainable.

He concluded by saying that if government demands more than the local increases in income, there will be a time when people will depart; the economy will go bust and businesses will fail. He asked if we have a revenue problem or a management problem.

Mayor Goode closed the public hearing.

Moved by Corby/Meehan for approval of Ordinance No. 2007-58.

Mrs. Corby referenced comments that have been made regarding the quality of water and complaints Council Members have received about water quality. She noted that she received a call this date about water quality in the Lake Washington area. She questioned where the money is going if we have \$98 million outstanding in bonds and \$34 million received in water sales and sewer charges in 2006. Mrs. Corby stated that the rate increases are needed to provide needed improvements to the system. However, she would like to know where the money is going, why it is taking so long and what went wrong with our system.

Public Works and Utilities Director Robert Klapproth said that he has been the utilities director for 20 years and during that time the City has had an ongoing program of replacing water lines every year. Prior to 1975, lines were metal – either cast iron, ductile or galvanized. PVC did not become prevalent until 1975. The iron pipe is old and it is failing. We have had limitations on how much we can spend every year. We have spent \$3 - \$4 million per year for the last 20 years just on pipe replacement.

Mr. Klapproth stressed that this does not relate to the water plant. The plant was originally built in 1959 and has been expanded four times. The regulations keep changing; it's a living, breathing system and the City keeps up as best as it can. The current situation with the water is more chemistry than piping.

Mrs. Corby asked if the PVC pipe is better. Mr. Klapproth said it is plastic so it doesn't rust or corrode. PVC pipe is used in replacement projects.

Mr. Schluckebier asked what proportion of the City's 1,100-mile distribution system is metal and still remains to be replaced. Mr. Klapproth replied over 50%.

Mrs. Corby asked if the City's growth or annexations have caused an extra strain on the system. Mr. Klapproth said no and added that the upcoming unidirectional flushing program will result in complaint calls dropping by 75%. He reported that the system also has a chemistry issue. Council authorized a chemistry study on water several months ago. Staff just received the results, which will be provided to Council. Chemical adjustments will have

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to be made because the way we are treating and distributing the water is causing corrosion on the inside of the metal pipes.

Mr. Klapproth confirmed that the waterline replacement program report (requested at the July 23 budget workshop) will be provided to Council. Later in the discussion, Mrs. Palmer asked that visual aids/maps be in a format that can easily be viewed on television.

Mrs. Corby asked how the rate increases will impact the improvements. Mr. Klapproth said we will do the best we can. The City reduced planned projects by \$66 million to keep the rates as low as possible. He confirmed that pipe replacement was not removed from the capital improvement program.

Mr. Klapproth confirmed for Mr. Schluckebier that many of our projects relate to water plant improvements to meet new federal standards. The City Manager added that if we don't attain those standards, we will not be in the water business.

Mrs. Palmer referenced the City's Actiflo treatment process and asked if the chemistry problems are coming from this process. Mr. Klapproth replied no; they relate to the treatment of the water and the process of eliminating trihalomethanes.

Mr. Contreras pointed out that the capital improvement projects have been reduced for 2007-2008 budget. Mr. Klapproth clarified that the amount he referenced was for the five-year capital improvement program, and many of the projects were for anticipated regulatory requirements. Mr. Contreras cautioned that since those projects have been postponed, if/when those requirements become mandated the City will have to pony up quite a few million dollars.

Mrs. Palmer asked how much from the increase in rates will go towards contingency or reserves to give us a good bond rating. Mr. Schluckebier replied that we are using up existing reserves. Several strategies were undertaken to keep the rate increases as low as possible. Projects that did not relate to hard/fast requirements were pushed into the future; the scheduled bonds anticipated for this year were lowered from \$37 million to \$25 - \$26 million; and existing reserves were used. The City of Melbourne has almost \$100 million in outstanding debt and that goes with some permanent reserves that must be maintained. That is the bondholders' guarantee; those reserves are not available to be used.

A brief discussion followed regarding the delay of capital improvement projects.

The question was called. The roll call vote was:

Aye: Meehan, Thomas, Palmer, Corby and Goode

Nay: Contreras

Motion carried.

12. ORDINANCE NO. 2007-59 (Z-2007-1112) ST. MICHAEL PLACE, PHASE ONE: (Second

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Reading/Public Hearing) An ordinance changing the zoning from M-1 (Light Industrial) to M-2 (General Industrial) on a 2.204±-acre portion of a 17±-acre parcel to allow development of two 12,000 sq. ft. office/warehouse buildings and an 87,200 sq. ft. manufacturing facility with offices, located on the west side of Apollo Boulevard at the intersection of St. Michael Place. (Owner/Applicant - Melbourne Airport Authority) (Representative - Brian Pendleton, P.E., Airport Engineering Co., Inc.) (First Reading - 7/10/07)

The City Attorney read Ordinance No. 2007-59 by title. There were no Council disclosures and no comments from the audience during the public hearing.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-59 based upon the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

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

Motion carried unanimously.

13. ORDINANCE NO. 2007-60, AD VALOREM TAX EXEMPTIONS: (Second Reading/Public Hearing) An ordinance amending Chapter 30 of the City of Melbourne Code, entitled "Taxation," as it relates to Economic Development Ad Valorem Tax Exemption, amending Section 30-63 by revising the definition of the expansion of an existing business in accordance with Florida Statute 196.012(16). (First Reading - 7/10/07)

Attorney Gougelman read Ordinance No. 2007-60 by title. There were no public comments.

Moved by Meehan/Contreras for approval of Ordinance No. 2007-60. The roll call vote was:

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

Motion carried unanimously.

14. ORDINANCE NO. 2007-61 BUSINESS TAX RECEIPTS: (Second Reading/Public Hearing) An ordinance amending Chapter 19 of the City of Melbourne Code, entitled "Local Business Tax Receipts," by revising the date for beginning the annual sale of local business tax receipts from August 1 to July 1 each year. (First Reading - 7/10/07)

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

Moved by Contreras/Meehan for approval of Ordinance No. 2007-61.

Mrs. Corby asked if staff has calculated the anticipated revenue from this change. The City Manager replied that this ordinance does not change the rates; it changes timing of sale of local business tax receipts.

The question was called. The roll call vote was:

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

Motion carried unanimously.

15. ORDINANCE NO. 2007-62 RETIREMENT AND PENSIONS: (Second Reading/Public Hearing) An ordinance amending Chapter 23 of the City of Melbourne Code, entitled "Retirement and Pensions," Article VII, General Employees' and Special Risk Class Employees' Pension Plan, to allow elected Trustees to be selected by a majority vote of those members who vote in the election and to liberalize the current investment restrictions. (First Reading - 7/10/07)

The City Attorney read Ordinance No. 2007-62 by title. There were no comments during the public hearing.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-62. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

16. COUNCIL ACTION RE: Contract award for professional engineering services associated with the implementation of the Unidirectional Flushing Program, Project No. 31306, Reiss Environmental, Inc., Winter Park, FL - \$150,000. (Authorized by Council - 5/22/07)

Assistant Public Works/Utilities Director Harold Nantz was available for questions. Mrs. Palmer asked how soon we expect the flushing program to begin. Mr. Nantz said that staff will return mid September with the selection of a contractor and within two to three weeks, we expect to be moving along.

Moved by Meehan/Corby for approval of a contract with Reiss Environmental, Inc. for the professional engineering services required to begin the implementation of the Unidirectional Flushing Program for a not-to-exceed contract amount of \$150,000. Motion carried unanimously.

17. CONSENT AGENDA:

Mayor Goode noted that Council Member Corby asked that Item "e" be removed and Council Member Meehan has asked that Item "g" be removed.

Moved by Palmer/Contreras to approve the consent agenda, with the exception of Items "e" and "g." Motion carried unanimously.

- a. Purchase and installation of cabinetry and additional electrical improvements for temporary office space at Melbourne Plaza, LLC, Certified General Contractors,

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Melbourne, FL - \$25,104.72 and an appropriation from Fund Balance in the General Fund of \$27,616 to Non-Departmental - Other Contractual Services to establish funding for this project.

- b. Purchase and installation of voice and data cabling equipment for temporary office space at Melbourne Plaza, LLC, Morse Communications, Inc., Melbourne, FL - \$22,807.75 and an appropriation from Fund Balance in the General Fund of \$25,089 to Non-Departmental - Other Contractual Services to establish funding for this project.
- c. Contract award for domestic biosolids hauling services, Shelley's Environmental Systems, Zellwood, FL - \$14.78/cubic yard; estimated annual cost of \$147,800.
- d. Extension of HOME Tenant Based Rental Assistance for Darlene Douglas.

Item "e" was removed from the consent agenda (see Item #18 for action).

- e. Authorization for the City Manager to negotiate and execute a contract with Hull & Associates, Maitland, FL, in an amount not to exceed \$12,500 to perform an employee satisfaction survey; and transfer of \$8,875, \$2,375, and \$625 from General Fund Contingency, Water & Sewer Fund Contingency, and Golf Courses Fund Contingency to Non-Department - Other Professional Services.
- f. Lien Rescission CE-06-038: Approval of request for a lien reduction from \$7,000 to \$0. (Brenda Muh, Space Coast Realty Corp. - 2851 Colbert Circle)

Item "g" was removed from the consent agenda (see Item #18 for action).

- g. Lien Rescission CE-06-074: Approval of request for a lien reduction from \$16,750 to \$8,813 if paid within six months. (John A. & Melinda A. Redling - 427 Pirates Moon Court)
- h. Resolution No. 2042: A resolution supporting the nominations of Harry C. Goode, Jr. as Mayor of the Year; Cheryl J. Palmer as Council Member of the Year; Cathleen A. Wysor as City Clerk of the Year; and Cindy K. Dittmer as City Employee of the Year for the Florida League of Cities 2007 Florida Cities of Excellence Award Program.
- i. Resolution No. 2043: A resolution adopting the street name "Courage Circle" for an unplatted street in the Crossings at Baymeadows Condominium complex.

Recessed: 8:12 p.m.

Reconvened: 8:22 p.m.

18. ITEMS REMOVED FROM THE CONSENT AGENDA

- e. Authorization for the City Manager to negotiate and execute a contract with Hull &

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Associates, Maitland, FL, in an amount not to exceed \$12,500 to perform an employee satisfaction survey; and transfer of \$8,875, \$2,375, and \$625 from General Fund Contingency, Water & Sewer Fund Contingency, and Golf Courses Fund Contingency to Non-Department - Other Professional Services.

Mrs. Corby asked the criteria used to select this firm. Deputy City Manager Amy Elliott explained that staff looked at a number of surveys prepared for other jurisdictions and the types of surveys provided by other entities. The decision was made based on the type of questions being asked and the quality of information obtained. Selection was also based on timeliness, approach and integrity of process. She added that she believes Hull & Associates is the firm best suited to meet the desires of Council.

Mrs. Corby said she would like for Council to have the opportunity to review the survey prior to distribution so Council can ensure that the objectives will be met.

There were no objections.

Mr. Thomas said he would like the survey to include an opportunity for employees to identify a problem and provide a solution.

There were no objections.

Mrs. Corby stated that there are many different variables applicable to a survey. It is important to have up front the objectives that Council is seeking. Surveys can be customized and the different variables can be customized.

Moved by Corby/Thomas to have Council review the survey prior to administering it.

Mrs. Palmer said she would like for Dr. Hull to show the City several potential surveys that can be reviewed. Mrs. Elliott said that anything is possible, but not within the \$12,500. Mrs. Palmer said she was assuming that models were available. Mrs. Elliott said that there are models. Melbourne's survey will be semi-customized because there is a huge databank of questions to select from. Models could be constructed, but the price of the survey will be affected each time there is a variation.

Mr. Schluckebier confirmed that there is room to customize. Ten or 12 questions can be substituted; however, if a 50 item questionnaire turns into 75 questions, or if questions that have definite, discrete answers are changed to 10 open ended questions, the nature of the response summary time will change.

Mrs. Corby asked the number of employees involved. Mrs. Elliott said that on the day she inquired about this item, the City had 1002 full- and part-time employees.

Mrs. Corby said that the price is in line because the going rate is about \$10-\$12 per employee. She added that we do not want a long survey. Surveys that are too long are a strong disadvantage. She added that she would be willing to speak to Mrs. Elliott at another time to provide some key points so that measurables can be achieved.

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Mayor Goode said he is opposed. Hull & Associates is the professional; he is not. He would be satisfied with Hull making the determination rather than changes being made and the cost increasing.

Mr. Thomas asked Mrs. Corby if she wants the survey to return on a Council agenda or if members can review the survey in individual meetings with the City Manager.

Mrs. Corby said she was simply looking for Council to have the opportunity to review before the survey is conducted. She stressed that there is nothing more frustrating than spending money and not receiving the information we are seeking. The purpose of a survey is to measure something and the City needs to determine what we are measuring. Mr. Thomas agreed and added he didn't want to unnecessarily delay the item.

Mrs. Corby said that in order to be helpful and keep the momentum going, she would recommend that Council Members let Mrs. Elliott know the objectives they are seeking. She added that this is the information the firm will be looking for to customize the survey.

The City Manager commented that if the final product is roughly the same survey with several different questions that's fine. However, if there is any major expansion, Dr. Hull will want to talk about additional work.

The question was called. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer and Corby

Nay: Goode

Motion carried.

Moved by Palmer/Contreras to approve Item "e." Motion carried unanimously.

- g. Lien Rescission CE-06-074: Approval of request for a lien reduction from \$16,750 to \$8,813 if paid within six months. (John A. & Melinda A. Redling - 427 Pirates Moon Court)

Attorney Gougelman said that Council's procedures call for the Mayor to poll Council and determine if there are four votes to set this item for a public hearing. Mayor Goode added that the public hearing would be held two meetings from this date.

Moved by Meehan/Palmer to place this on a Council agenda (August 28) and conduct a public hearing on the lien rescission. The roll call vote was:

Aye: Contreras, Meehan, Thomas, Palmer and Corby

Nay: Goode

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Motion carried.

19. FINAL PLAT APPROVAL (SD-2005-05) VERANDA PARK: (Public Hearing) A request for final plat approval for a 114-lot, single-family residential subdivision at a density of 1.6 units per acre on 76.5 acres, located between Eau Gallie Boulevard and Aurora Road, west of Wickham Road and east of John Rodes Boulevard. (Owner/Applicant/Representative - The Coy A. Clark Company) (P&Z Board - 7/05/07)

Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of this request as shown on a five-page final plat prepared by AAL Land Surveying Services Inc., of Merritt Island, Florida, signed, sealed and date-stamped June 20, 2007, subject to the following conditions

- a. The applicant shall not be entitled to record the final plat until all subdivision improvements are constructed to the satisfaction of the City, or an improvement guarantee of at least 110% is provided to the City to ensure the completion of the improvements.
- b. The applicant shall provide the additional required documents, pursuant to Appendix D, Chapter 8, Section 8.5 (c) (4) prior to plat recordation.
- c. The applicant shall provide the additional required information and certificates as required by F.S. 177.071 and 177.081 prior to recordation of the final plat.
- d. Only two building permits may be issued on any portion of the plat prior to recordation of the final plat.

Mrs. Dittmer confirmed for Mrs. Palmer that the lot sizes are in excess of the minimum required 100' x 120'.

There were no disclosures by Council. Robert Robb, representing the owner, was available for questions. There were no comments from the public.

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

20. ORDINANCE NO. 2007-63 UTILITY TAX: (First Reading) An ordinance amending Chapter 30 of the City of Melbourne Code, entitled "Taxation," by establishing a 10% utility tax on water service.

The City Attorney read the ordinance by title. The following is an excerpt from the agenda report:

This tax is currently levied on electricity and metered and bottled gas and is recommended to apply to municipal water service. The tax would only be applied to the

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water sales portion of the monthly utility bill. It is not levied on the sewer or refuse charges.

Seven other cities in Brevard County levy the tax on water sales to supplement General Fund revenues. They are Titusville, Palm Bay, West Melbourne, Indialantic, Indian Harbour Beach, and Palm Shores.

The utility tax on water sales is estimated to generate \$1,100,000 revenue for the General Fund. This tax would apply to customers within the city limits of Melbourne. The tax on the typical residential customer would be \$2.00 per month. This is a recurring revenue source that can be used to fund recurring General Fund expenditures. Implementing this tax will enable Melbourne to avoid program cuts next fiscal year. Staff is also reviewing other potential new revenues or increases in existing fees to supplement General Fund revenues. This report will be provided separately for Council consideration during the 2008 budget workshop/adoption process.

Mayor Goode opened the public hearing.

Beth Young, 2401 Dairy Road, said it was disheartening to learn that Council is considering a 10% tax on water in addition to the water and sewer rate increases. She stated that government is not in business to make profit, but to provide basic services to its residents. She asked if Council has given any thought to the effect the increases will have on senior citizens, many of whom are on fixed incomes, or residents who are unemployed.

Mrs. Young recommended that Council look for cuts in Melbourne's budget. She recommended withdrawing from the Florida League of Cities, eliminating all handouts to non-profit organizations, stopping construction on the new City Hall, etc. She added that the 10% tax is in opposition to the recent action of the legislature. Skyrocketing costs of city and county government caused the legislature to take a stand on this problem. She asked Council to consider whether this tax is the best thing for the residents of the City and concluded by saying that certainly Council can come up with meaningful budget cuts without going to the well of taxpayers for more money.

Mr. Contreras asked how the tax relief passed by the legislature will fix the root cause of property tax inequities. Mrs. Young replied that if the amendment passes in January, it will solve the problem. A brief discussion continued.

Mrs. Palmer stated that she won't vote for this tax. She added that she realizes the revenue is included in the proposed budget; however, that was a proposed budget. There will be budget hearings and there were many revenue suggestions from Council Members and staff. Mrs. Palmer stated that water is a necessity and there are many people who have a difficult time paying their bills and staying in their homes. She won't burden them with this extra tax. She added that she voted for the water and sewer rate increases because she sees a need for those; however, the utility tax is a revenue stream that she won't support.

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Mr. Thomas's motion to approve Ordinance No. 2007-63 did not receive a second.

Mayor Goode recommended that Council and staff start digging for \$1.2 million. Mrs. Palmer expressed confidence that the money will be found. Mayor Goode added that during the budget workshop, Council cut \$4.2 million from its budget mandated by the legislature. This will result in a person in Melbourne with a home appraised at \$100,000 saving two dollars.

Mr. Thomas asked what the alternatives are if this utility tax is not passed. Mayor Goode said that Council will probably have to hold a special meeting in late August or early September to direct staff on where to find \$1.2 million.

Mrs. Palmer said she feels like the Mayor is chastising her. She asked him why he did not second the motion. Mayor Goode said when the utility tax idea was first discussed, he said he would vote for it for discussion; however, he has "seen the light."

Mrs. Corby said that based on action taken at the workshop meeting, the next version of the budget may not be \$1.2 million short. The Mayor repeated that Council has to find another \$1.2 million to reach the \$4.2 million in cuts required by state law. Mrs. Corby said state law requires the City to pass a millage rate that does not require a supermajority vote; that millage rate was not passed at the workshop meeting. Council exercised the flexibility the legislation imposed.

The Mayor disagreed and said if we followed that logic, rather than finding \$1.2 million, we would have to find \$2.7 million. Mrs. Corby replied that the vote at the budget workshop meeting required a supermajority vote. If the City exercised the seven percent cut imposed, our millage rate would be around 4.1.

Mr. Schluckebier said that, as reported in the agenda package, our millage rate would be lower and we would have to find an additional \$1.5 million.

Mrs. Corby said that the City needs to look at all options. The option of tax reform starts right here and she chose to exercise it.

21. COUNCIL DISCUSSION RE: Consideration of criteria for selling City-owned property. (Requested by Council Member Palmer)

The following is an excerpt from the agenda report.

Deputy City Manager Howard Ralls researched this issue and his report is included in the agenda materials. The procedures and criteria for selling city-owned property are not extensively defined in the Melbourne City Code. Mr. Ralls also researched the codes of many other counties and municipalities in Florida and has identified a number of points that can be incorporated into the Melbourne City Code.

The memorandum outlines Melbourne's current Code-defined procedures. It identifies key points that are considered by other municipalities and counties in their determinations

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on selling publicly owned property. It also defines the provision of a staff report that would better define the property and the analysis used to make a recommendation. If recommendations are approved, this item would come back in ordinance form with included revisions.

Staff recommends adding the following items to the City Code:

- 1. Require an ordinance authorizing the sale.*
- 2. If a property's value exceeds \$1,000,000, require a supermajority vote of five members of the Council to approve its sale, if to a non-governmental entity.*
- 3. Require a supermajority vote by Council for the sale of any park property – this could only be parcels less than two acres (larger parcels require a referendum).*
- 4. Require an appraisal if the estimated market value as determined by the Brevard County Property Appraiser is above \$50,000 but do not require an appraisal if less. (The Brevard County Property Appraiser's market value can be used.)*
- 5. Require reimbursement of the appraisal costs prior to proceeding with the appraisal if the sale is requested by a private entity.*

Mrs. Palmer said this item came to mind after the City sold the Downtown parking lot and agreed to hold the note on that property for less than prime interest. A sweet deal was given to a developer and now the City has to build a parking garage. In light of the current real estate market, it would be tempting to sell City properties to generate revenue. She noted that she asked staff to draft restrictions on selling City owned property to private developers.

Mrs. Palmer pointed out that the City is prohibited from selling, leasing or disposing of park property, property dedicated for public use or property having riparian and littoral rights designated as waterfront property without a referendum. However, a referendum would not be required in cases where the City Manager certifies to the City Council that the public benefit of selling/disposing outweighs the interest of not selling, and the land area is less than two acres.

Expressing caution, Mrs. Palmer said that "public benefit" could be money; financial interest could outweigh the use of the property. She read the five criteria recommended by staff (see above) and recommended the following items from the staff report be included:

- Require that the sale price not be less than fair market value.
- Notify all the abutting property owners and post the property before any Council action.
- Approve a potential sale, then advertise the sale to the public and receive sealed bids.

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- If it is a Council initiated sale of surplus property, sell at public auction or by competitive bidding.

Continuing, Mrs. Palmer said that influence peddling is too easy. People could be elected to Council that would approve a sale at a nice price and residents would not have a voice in the matter.

Regarding the sale of the Downtown parking lot, Mayor Goode said that not only will the City receive \$1 million-plus, but the parking on the first floor will be deeded to the City. This land wasn't just given away to a developer. Mrs. Palmer stated that the developer was given less than the prime rate. The Mayor replied that was because the spaces will be deeded back to the City.

The City Manager commented that this item was prepared at Mrs. Palmer's request. If it's Council's desire to adopt the criteria, including the additional criteria identified, staff will return with an ordinance.

Regarding the City Manager being able to certify to the City Council that the "public benefit of selling/disposing outweighs the interest of not selling", he clarified that the City Manager's opinion would be only an opinion and any transaction would have to occur with Council confirmation.

Mrs. Palmer stated that she is not speaking against the current Council and City Manager. She noted that these folks will not always be here and this Council needs to take action to protect the City. Mrs. Palmer stated that she will sit with Deputy City Manager Ralls and work on an ordinance.

Mayor Goode said that Mrs. Palmer, along with any other Council Members, will work individually with Mr. Ralls so staff can return with an ordinance for Council's consideration.

22. COUNCIL ACTION RE: Appointment of one regular member and one alternate member to the Planning and Zoning Board.

Mr. Contreras nominated Noel Droor for the regular member seat. Moved by Corby/Goode to close the nominations. Motion carried unanimously. Moved by Goode/Corby to reappoint Noel Droor. Motion carried unanimously. (Term: 12/13/2007 – 12/12/2010)

Mrs. Corby nominated Bruce Waters for the alternate member seat. Moved by Contreras/Thomas to close the nominations. Motion carried unanimously. Moved by Palmer/Meehan to appoint Bruce Waters. Motion carried unanimously. (7/24/2007 – 1/24/2009; unexpired, three-year term)

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

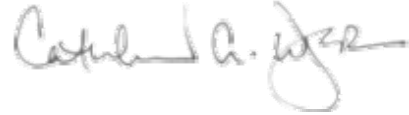
None.

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24. ADJOURNMENT

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

The meeting adjourned at 9:20 p.m.



City Clerk – 8/1/2007

Approved by Council: _____