

CITIES OF MELBOURNE AND WEST MELBOURNE, FLORIDA  
MINUTES – JOINT PUBLIC MEETING FOR CONFLICT RESOLUTION  
JULY 25, 2007

A joint meeting of the Melbourne City Council and the West Melbourne City Council was held in the Indialantic Town Hall Council Chamber, 216 Fifth Avenue, Indialantic, Florida, and was called to order at 7:00 p.m. by Richard Dantzler, Mediator.

1. Pledge of Allegiance.
2. Roll Call.

**City of Melbourne:**

Harry C. Goode, Jr., Mayor  
Mark LaRusso, Vice Mayor  
Richard Contreras, Council Member  
Kathy Meehan, Council Member  
John Thomas, Council Member  
Cheryl Palmer, Council Member  
Joanne Corby, Council Member (arrived 7:05 p.m.)  
Jack M. Schluckebier, City Manager  
Paul R. Gougelman, III, City Attorney  
Tom Cloud, Special Counsel  
Cathleen A. Wysor, City Clerk  
Amy W. Elliott, Deputy City Manager  
Howard Ralls, Deputy City Manager  
Robert Klapproth, Public Works/Utilities  
Director

**City of West Melbourne:**

Hal Rose, Deputy Mayor  
Charles Settgest, Council Member  
John D'Amico, Council Member  
Bill Mettrick, Council Member  
Jan Lieson, Council Member  
Virginia Blanchard, Council Member  
David W. Reynal, City Manager  
Jim Stokes, City Attorney  
Keith Mills, Deputy City Manager  
Scott Glass, Special Counsel  
Matt Soyka, Consultant

3. Introductions and Opening Remarks – Rick Dantzler, Mediator

Rick Dantzler informed the audience that he is an attorney who lives in Winter Haven, and he will be serving as the facilitator. Mr. Dantzler noted that he has read summaries about this issue from the attorneys. His role will be to facilitate a conversation that will lead to resolution. His goal is to see if the two commissions will have a discussion that will bring this issue in for a landing without the need for a lawsuit, trial and all the expense that goes with that. He concluded by discussing how the meeting will be conducted.

Melbourne Council Member Joanne Corby arrived at 7:05 p.m.

4. Presentation of Melbourne's Position

Melbourne Special Legal Counsel Tom Cloud provided a brief background on the issue. He explained that on April 3, West Melbourne passed an ordinance to annex Mr. Hesse's property. He explained that the City of Melbourne has two contracts with Mr. Hesse. The first is for annexation and the second provides that Mr. Hesse will buy utilities from Melbourne. Melbourne objected to the annexation; however, West Melbourne proceeded and adopted the ordinance. Melbourne initiated these proceedings under Chapter 164, State Statutes. That law imposes a duty on cities, counties and special districts to negotiate in good faith before turning to litigation. Beginning in May, the staffs from both cities met on

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three or four occasions, but the dispute over Hessee has not been resolved.

Mr. Cloud continued explaining the Chapter 164 process and stated that if the parties can't agree, this process will lead to mediation. That is why the two staffs thought that a mediator should be involved at this stage. If we reach impasse after mediation, Melbourne has a decision to make on whether to sue.

Continuing, Mr. Cloud said that the issues are simple. First, who gets to annex the Hessee property and second, who gets to provide retail water and sewer. Melbourne has acted in reliance on the two contracts. Service has been extended to the property; it is there now. West Melbourne has no service or capacity for this property. Of course, water service in West Melbourne comes from Melbourne. Mr. Cloud pointed out that he hasn't seen any West Melbourne water and sewer lines adjacent to this property. That is significant because in a territorial dispute, which ultimately this is, if you don't have proximate facilities you are in a difficult position. This is especially true if the competing utility has adjacent facilities and capacities to serve and is not relying on construction of future plants.

Attorney Cloud explained that this point has been well decided in the 5<sup>th</sup> District Court of Appeal. He referenced the 2001 settlement agreement adopted as a result of Palm Bay's ordinance that dealt with extra territorial service extension. The settlement provides that if a developer votes with a developer's agreement – regardless of annexation – the development remains a customer of the entity that holds the developer's agreement. Melbourne has that; we have two agreements. The argument is simple, it is not esoteric and we don't have to win on a tortuous interference claim.

The response Melbourne received from West Melbourne staff and attorneys is that Melbourne can't contract away West Melbourne's ability to annex. The second response to the claim of tortuous interference is that "it was Hessee's idea." Hessee solicited West Melbourne, so there is no tortuous interference.

Mr. Cloud pointed out that it is not a question of Melbourne affecting West Melbourne's power to annex. It is a question of Hessee lacking authority to consent. Hessee signed away his consent. State Statutes require consent and if Hessee has already given it, Mr. Cloud said he believes that will be a problem for Hessee and West Melbourne. He added that historically Brevard courts support the notion that a deal is a deal.

With regard to Hessee, Attorney Cloud said that our contracts are not at an end just because he wants more development rights. Hessee wants to annex so he can build more units. He claims there is no service and Melbourne says that is not true. Mr. Cloud questioned why a court in this state would rule that a contract would get thrown out because a developer wants more entitlements. He stressed that Melbourne can provide service to the property.

Mr. Cloud explained that we offered before and after the annexation to allow West Melbourne to annex while Melbourne provides service to Hessee's expanded needs, without trying to set the stage for expansion. West Melbourne staff said that it did not want Melbourne to use service to the property as a springboard that would allow a leg up on

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annexations. He added that Melbourne has a waterline on the other side of the interstate and whether retail or wholesale, Melbourne is going to supply the water. And, offering us retail water on the west side is not offering a whole lot. Attorney Cloud noted that our offer was rejected.

Attorney Cloud referenced West Melbourne City Manager David Reynal's memorandum rejecting the offer, which in his (Mr. Cloud's) opinion is a statement that West Melbourne needs Hesse's contributions to be able to extend its utilities and be able to springboard to the other side to carry out other annexations. The memo says that West Melbourne wants to be able to do what it does not want Melbourne to do.

Mr. Cloud summarized the offer made by West Melbourne last week and said that it is his perception that it is a hair one sided. Again, it enables West Melbourne to get the leg up that it did not want Melbourne to get. He noted that we would prefer to negotiate the division of territories for annexation and utilities.

Referencing the Tuck Ferrell/Dworkin property, Mr. Cloud said that he has advised Melbourne not to have anything to do with this in terms of annexing because West Melbourne has a contract with the property owner. He commented that he believes Melbourne is going to provide water to both sides of the interstate, whether wholesale or retail. It's not that big of a deal from a money standpoint. That is why the offer on the table right now is not a good deal for his client. He concluded by saying that a fair settlement means that it needs to be fair to both parties.

Mr. Dantzler asked what hard expense Melbourne incurred to date. Mr. Cloud replied that Melbourne has held water and sewer capacity available and constructed (water) lines to the property at a cost of over \$150,000.

In response to West Melbourne Council Member Jan Lieson, Mr. Cloud explained the difference between retail and wholesale water sales.

Mr. Dantzler asked Mr. Cloud to display on the map the offer that was made to West Melbourne. Mr. Cloud explained that Melbourne offered to allow West Melbourne to annex the property and Melbourne would provide retail water and sewer. In addition to that, Mr. Cloud said the May 31 letter he sent made it clear that we would only provide capacity to this property. Mr. Dantzler asked how West Melbourne can guard against the property becoming a springboard for Melbourne.

Mr. Cloud responded and said that once West Melbourne annexes, Melbourne can't make a connection through the property. Additionally, Melbourne agreed that it would not take an easement from the property owner to continue through.

Mr. Dantzler referenced the idea of negotiating annexation and territory boundaries and asked if lines were ever drawn on a map. Mr. Cloud replied that a map was recently included with West Melbourne Special Legal Counsel Glass's concept; however, it was prepared in the context of Melbourne being the retail water supplier on the west side of the interstate and West Melbourne being the retail sewer supplier in the southwest quadrant.

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Other areas were to be determined later.

Mr. Dantzler stated that in addressing the Hessee property, it would be nice to resolve any future disputes by setting lines and determining who would provide services.

West Melbourne Council Member Virginia Blanchard referenced the comment that Melbourne has spent \$150,000. She asked if the lines have already been installed and Mr. Cloud replied yes. Melbourne Public Works/Utilities Director Robert Klapproth displayed on the map where the waterline has been extended. In response to West Melbourne Deputy Mayor Hal Rose, Mr. Klapproth explained that the extension was made about four months ago. Mr. Dantzler asked if the extension was made to accommodate the Hessee property and Mr. Cloud replied yes.

5. Presentation of West Melbourne's Position

West Melbourne Special Legal Counsel Scott Glass stated that the City of Melbourne believes West Melbourne is infringing on contract rights Melbourne believes it has through Mr. Hessee. It is true that, despite the existence of a contract, West Melbourne went ahead and annexed the property; however, there is another side to the story. It is a lengthy story full of frustration, incessant delay and ever increasing expense.

Attorney Glass offered the following timeline on the Hessee property along with Mr. Hessee's efforts to develop. He said that the information comes from witnesses who are prepared to testify and from documentary evidence that West Melbourne is prepared to provide to a court of law. He noted that they would prefer to settle this; however, they are prepared to move forward.

- May 2004 – Mr. Hessee first approached West Melbourne about providing water and sewer for a proposed assisted living facility. At that time, West Melbourne was not in a position to provide water and sewer. Mr. Hessee turned to Melbourne. Melbourne staff told him they could provide water but they were not sure if the nearest sewerline – a six-inch line on John Rodes Boulevard – could handle the project. Melbourne told Mr. Hessee they would get back with him, but they did not. Over the next several months, Mr. Hessee and his engineers made five unsuccessful requests for follow-up with Melbourne staff regarding the status of sewer.
- November 2004 – Melbourne finally responded to Hessee's request. Hessee was advised by Melbourne staff that they had serious concerns about the capacity of the line on John Rodes Boulevard; however, they did say they would soon commission a study of this line.
- January 2005 – Melbourne told Mr. Hessee that they had worked out the scope of services for the sewer study. They expected that the study would be completed within 60 days of a contract being let. At that time, Melbourne staff told Mr. Hessee that he would need to sign a pre-annexation agreement. Hessee said he would be more than willing to sign if it meant he could get sewer and move his project forward. Another three months passed without forward progress.

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- May 2005 – After numerous unsuccessful attempts to find out how the sewer study was progressing, Mr. Hessee contacted the consultant directly. The consultant advised Mr. Hessee that he (Hessee) was the hold up; they were waiting for his project's estimated sewer demand numbers. Mr. Hessee had previously provided those numbers to Melbourne.
- June 2005 – Mr. Hessee's engineer met with Melbourne staff and was advised that although the internal review was not final it appeared unlikely that there was transmission capacity available in the John Rodes forcemain. Melbourne staff continued pushing Hessee to sign a pre-annexation agreement and promised water and sewer service.
- July 12, 2005 – Hessee signed the agreement and reserved water and sewer treatment capacity even though Melbourne could still not document that its sewer collection system was adequate to serve the project.

As a side note, Attorney Glass said that the agreement provides that Hessee would annex into Melbourne, but only if the property should become substantially contiguous to the Melbourne city limits. He stated that the property is not now and may never be substantially contiguous to Melbourne's limits. He continued with the timeline on the Hessee property:

- February 2006 – Hessee received word that the long awaited John Rodes forcemain analysis had been completed. The report stated that the existing six-inch line on John Rodes Boulevard was operating at its capacity. Further, the report stated that the existing forcemain is over committed. Melbourne had treatment capacity but it did not have the capacity to collect and convey the project's effluent to the treatment plant.

Attorney Glass reported that at this point, Melbourne sprang a new condition on Mr. Hessee. If Hessee wanted Melbourne to provide sewer service, he would have to donate a 50' x 50' chunk of property, build Melbourne a regional lift station and grant an easement across the full width of his property. These things were being demanded not because Hessee's project required them, but to provide relief for other Melbourne customers and to allow Melbourne to extend its sewerlines to get west of I-95. Mr. Hessee simply wanted to obtain water and sewer and get his project underway. He and his engineers spent the next several months trying to accommodate Melbourne's demands for a regional lift station. His engineers repeatedly requested project flow capacities for properties Melbourne was eyeing west of I-95. Mr. Glass commented that unfortunately the only thing Mr. Hessee received was additional delay and increased costs. Continuing with the timeline, he reported:

- July 2006 – Mr. Hessee's costs had gotten so high that he decided he needed to modify his project to get a reasonable return on his investment. Because his proposed change would increase his sewer flow, Mr. Hessee asked Melbourne if the John Rodes line could handle a small increase in flow. He figured that because he

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would be donating property, providing an easement and constructing a lift station that maybe Melbourne would give sympathy and consideration. Instead, he was told by Melbourne staff that not only could the line not accommodate any additional flow, staff had serious doubts that the line could accept any flow from his property.

At this point, Mr. Hessee had finally had enough of Melbourne. He went to West Melbourne to see if anything had changed. West Melbourne told him they could not promise utilities right away but they were making plans for upgrades and extensions in the area; he might be able to join with other owners to advance those plans.

- September 2006 – Hessee met with West Melbourne staff to discuss their water and sewer upgrade and extension plans. Hessee was advised that he would have to participate in construction of a new 12-inch forcemain running south of 192. Hessee was so fed up with Melbourne's treatment and lack of performance under his agreement that he applied to voluntarily annex his property into West Melbourne.
- October 2006 – West Melbourne began the annexation process. Melbourne responded by threatening to sue Mr. Hessee and the City of West Melbourne.
- November 2006 – Not wanting to tie up his property any longer, Hessee offered to buy his water from Melbourne, grant Melbourne a 20' sewer easement across his property and donate a lift station if Melbourne would allow him to annex his property into West Melbourne and obtain sewer service from West Melbourne. Melbourne staff rejected that offer. West Melbourne and Hessee agreed to delay second reading of the annexation ordinance to continue negotiations with Melbourne.
- December 2006 through March 2007 – Several discussions were held between the two cities. West Melbourne repeatedly requested Melbourne staff sit at the same table with Mr. Hessee and West Melbourne to work out a settlement. Melbourne staff refused to meet with both simultaneously.

Continuing, Attorney Glass explained that West Melbourne offered to split utility services with Melbourne. Melbourne would provide water and West Melbourne would provide sewer. Melbourne staff rejected this. Melbourne countered that it would provide water and sewer in exchange for granting consent to the annexation. Because of planned improvements to the West Melbourne utility system, and not wanting the Brookfield/Hessee property to be a hole in the service area, West Melbourne rejected this.

Mr. Glass stated that with no resolution in sight and Mr. Hessee wanting to move his project forward, West Melbourne proceeded with the annexation. Even then West Melbourne offered to continue settlement discussions with Melbourne for 90 days. Melbourne again threatened to sue and initiated this Chapter 164 process. Since that time Melbourne and West Melbourne staff have held a series of meetings trying to resolve this dispute as well as other utility and annexation issues. Mr. Glass noted that they have a two-page synopsis of the most recent West Melbourne "global" settlement offer.

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Attorney Glass said that Mr. Hessee would have annexed into Melbourne, West Melbourne or stayed in the County if he could have obtained actual capacity to remove effluent from his project to any sewer treatment plant. He just wanted to develop. Mr. Hessee has worked as best as he could with Melbourne staff and yet his project has either been ignored or delayed; he's been squeezed for concessions; he's been willing to give concessions; and he still can't get sewer capacity.

Regarding the extension of Melbourne's waterline, Mr. Glass said this is the first he has heard about this. He pointed out that there hasn't been an extension of or upgrade to the sewerline. He asked the benefit of the bargain Mr. Hessee received and noted that a contract is a two way street. One side can't enforce the contract if they aren't going to honor their commitments.

Continuing, Attorney Glass said that Tom Cloud didn't mention seminal cases in the 5<sup>th</sup> District Court of Appeal that prohibit a city from letting its annexation rights be contracted away. Mr. Glass said Mr. Cloud presented a novel theory; however, he hasn't provided cases where anyone has accepted the theory that a property owner can forever consent away his right to annex property. Mr. Glass said he doubts that a court would force the Hessee property to annex into Melbourne. Melbourne's contract doesn't call for the property to annex until it is substantially contiguous.

With regard to "tortuous interference" that has been referenced, Attorney Glass recommended that Melbourne look at its offer to the "Baney property" where Melbourne has offered to provide that owner with an easement and utilities in order to get him to petition to de-annex from West Melbourne.

Attorney Glass concluded by stating that this is not about sanctity of contract. We are here because some people in Melbourne believe Melbourne should go west. He would like to see this settled; however, he is more than happy to try this case in a court of justice.

West Melbourne Council Member Settgast said that he does not understand Melbourne's fascination with this property. He noted that Melbourne has an unlimited ability to annex west to the Town of Harmony and northwest to Bithlo.

At Mr. Dantzler's request, Attorney Glass repeated the offer that West Melbourne made to Melbourne, which was rejected.

Mr. Dantzler asked if the cities have addressed what the world will look like west of I-95 in the future. Mr. Glass replied not that he is aware of. West Melbourne City Manager David Reynal added that there are pre-annexation agreements west of I-95 with individual property owners.

Melbourne City Manager Jack Schluckebier explained that some cities have entered into joint planning agreements with Brevard County; Brevard County has adopted a County-wide water and sewer distribution system that made them subject to the 2001 settlement

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agreement that has been referenced; Melbourne and West Melbourne have an agreement as to what services are extended outside their cities with respect to water only; there are various agreements with land owners; and Melbourne did initiate a municipal service area action with Brevard County in August under the revised Chapter 171 statute.

6. Presentation of Craig Hessee

Craig Hessee, representing Floridana, Inc. and Echo Trading Company, outlined his experience with trying to obtain utilities from the City of Melbourne (reference timeline reported by Attorney Scott Glass). He said that the basis for the relationship with Melbourne was to provide water and sewer to the property; there was no other reason for him to have a relationship with Melbourne.

Mr. Hessee stated that he believes Melbourne is in default of their agreement. That is why he had no choice but to pursue annexation into West Melbourne. He discussed his failed efforts to meet with the Melbourne City Manager to discuss an alternative resolution. At that time, the offer was for Melbourne to provide water service, West Melbourne to provide sewer service and the Brookfield property would provide an easement and property for a lift station. That proposal was provided to Melbourne after Thanksgiving 2006. There was no further contact from Melbourne, and in December he received a call from a reporter indicating that Melbourne had authorized litigation against him.

Regarding Melbourne's expense of \$150,000 to extend the waterline, Mr. Hessee said that does not resolve effluent running up and down the John Rodes sewerline.

West Melbourne Council Member Bill Mettrick asked Mr. Hessee how much he has spent on his property during this period. Mr. Hessee said that 36 months have passed since this process started, and his carrying costs are well over \$400,000, not to mention legal expenses.

Melbourne City Manager Schluckebier asked Mr. Hessee how much his property would be worth if sewer were not available. Mr. Hessee replied that is not relevant because sewer would be available from West Melbourne.

Mr. Dantzler asked Mr. Hessee what he believes would be a good resolution. Following brief discussion, Mr. Hessee said if the two municipalities can work something out, he's willing to work within the context of that.

7. Elected Officials' Discussion

Mr. Dantzler said it would be helpful to determine which community can provide which services.

West Melbourne Council Member Charles Settgast offered that West Melbourne has a plan. It has committed over \$3 million to that plan for water and sewer. And, contracts

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are going to be let. West Melbourne Manager Reynal added that their utility planning effort has evolved; the City has plans to service all the properties on the east side of I-95 with water and sewer. Council has approved proceeding with design and there is an RFP on the street for design of the waterline that will run in front of this property. Next year's budget contains \$2.5 million to accomplish that. Additionally, they have been talking to property owners about sharing the cost of extending and realigning the sewer system in that area. There are deficiencies in the utility system; however, there are plans to address both the water and sewer, which would be accomplished by Brookfield's participation in those improvements.

Mr. Dantzler asked the timeframe. Mr. Reynal said that the proposals for engineering services for the waterline are due on July 31 and \$2.5 million has been budgeted for waterline extension in that area. There are plans in the 2008 budget to begin realigning/reconfiguring sewer in the area. There is a forcemain and there is sewer capacity – it's just a matter of extending sewer to the property. He stressed that they feel comfortable they can provide sewer in the time period requested.

Melbourne Vice Mayor Mark LaRusso pointed out that there seems to be a disconnect in the timeline offered by Hessee, West Melbourne and Melbourne. He added that the requirement to sign a pre-annexation agreement is not unusual; Mr. Hessee was not singled out.

Following a brief discussion about whether Mr. Hessee spoke with the elected officials about this issue, Mr. Dantzler recommended that folks stay focused on this piece of property and work towards bringing this issue in for a landing.

Melbourne Manager Schluckebier asked Howard Ralls to outline the capacity we have and the upgrades that would be required to attain capacity. Mr. Schluckebier stated that Melbourne stands prepared to provide services to the Hessee property and meet the commitment under the existing contracts. He added that he has personally made this assertion to Mr. Hessee, which he (Hessee) failed to disclose, and that assertion has been made in writing.

Melbourne Deputy City Manager Howard Ralls reported that he saw nothing in the City's files prior to February 2005. He does not know what conversation, if any, Mr. Hessee had with City staff. As far as water and sewer concurrency, City planners issued a certificate of concurrency on August 24, 2005. The (sewer) concurrency is for 28,000 gallons per day. The utility service and annexation agreement is dated September 12, 2005.

Continuing, Mr. Ralls said that the engineering report referenced by Mr. Hessee is dated November 2005. The report indicates, "the proposed assisted living facility may connect with minimal impact." This means that we could connect him with the 28,000 gallons per day input into our forcemain and it would have no impact. It is a relatively insignificant amount. Mr. Ralls added that he would assume that is why plan review is going forward; Hessee submitted his engineering plans for review.

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Mr. Dantzler asked Mr. Hessee if that is enough capacity. Mr. Hessee replied no. Melbourne City Attorney Paul Gougelman commented that is the amount he contracted for.

Mr. Ralls reported that at a fairly recent meeting between the staffs and attorneys of both cities, Melbourne offered to Mr. Hessee another 30,000 gallons per day, which would double his capacity.

West Melbourne Manager David Reynal said he believes there has been selective reading of that report. Mr. Hessee's engineer is in the audience as well as the (West Melbourne) City Engineer who can discuss their understanding of Melbourne's system and its limitations. There is a different understanding as to the capability of Melbourne to provide sewer capacity today in its forcemain.

Mr. Dantzler repeated that he is trying to get a feel for what is available right now because that may have some bearing on the resolution.

Mr. Reynal said it is his understanding that there continues to be severe limitations on Melbourne's ability to provide sewer service to that site without planned improvements being made. West Melbourne has the ability to refute what has been said. He pointed out that Mr. Hessee made a judgment that Melbourne was clearly unable to provide the sewer capacity that he wanted to meet his proposed development. He came to West Melbourne because he thought West Melbourne could furnish that. And, West Melbourne can. He concluded by saying he does not believe it is a given that Melbourne has the capacity to serve Mr. Hessee's development.

Melbourne Special Counsel Tom Cloud said that Howard Ralls indicated that a concurrency certificate was issued for water and sewer for the original request by Mr. Hessee. Mr. Cloud said that Mr. Hessee neglected to include in his presentation that at some point his request doubled from 130 units to 260 units. Mr. Cloud informed the group that Melbourne sent a letter after the May 31 meeting agreeing, even though it was not in the contract, to provide water and sewer for 260 units.

West Melbourne Council Member Jan Lieson recommended that the two cities work on something that would be fair for Mr. Hessee. She added that she understands that Melbourne has certain responsibilities with regard to its system, but she would like very much for Melbourne and West Melbourne to come up with a solution that is fair. She concluded by asking what Melbourne would like on its plate.

Melbourne Council Member Cheryl Palmer said that Melbourne certainly wants to come to the table in the spirit of cooperation. She added that Mr. Hessee is being dragged back and forth because there was breach of the annexation agreement contract. Mrs. Palmer commented that there is a disagreement over the engineering report. The Melbourne City Council was never advised that Melbourne was unable to provide sewer capacity.

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Melbourne Council Member Kathy Meehan asked if today West Melbourne can provide water and sewer to that property.

Mr. Reynal confirmed that today West Melbourne cannot.

Following brief discussion, Mr. Dantzler said that Melbourne contends that it can provide sewer.

West Melbourne Council Member Settgest pointed out that this property is going to cost Melbourne a tremendous amount of money to service; therefore, he does not understand the fascination with this property.

Melbourne Mayor Goode said that the legislature passed a new law that allows annexation through interlocal agreement. There is no longer a requirement that property be contiguous. He added that we have honored our commitment and we are prepared to provide water and sewer today.

West Melbourne Council Member Lieson asked if Melbourne cares if Mr. Hessee does not want to be in the City of Melbourne.

Mayor Goode replied that he obligates City of Melbourne residents to pay the bonds for the water plant to provide water for West Melbourne and surrounding cities. West Melbourne can decide not to buy any water from Melbourne tomorrow, but Melbourne citizens would still be responsible to pay the debt service.

Mr. Dantzler said that one of the offers included allowance for the Hessee property to annex into West Melbourne. He referenced the map and said that seems like the logical thing to do. The property looks like it is a part of West Melbourne.

West Melbourne Council Member Bill Mettrick asked for confirmation that Melbourne and West Melbourne are able to supply water to the property.

West Melbourne Acting City Engineer Matt Soyka displayed on the map where Melbourne has an eight-inch line and where West Melbourne has an eight-inch line. He reported that the project is going to need at least a 12-inch line for fire flow. Both cities would be required to upgrade; however, West Melbourne already has consultants lined up and the project is scheduled for award at the end of August or September. When it comes to providing water, he said it is six of one and half a dozen of another.

Mr. Dantzler said it sounds like both cities are in a position to provide water, yet only Melbourne is in a position to provide sewer.

Melbourne Manager Schluckebier disagreed with the assessment on water. He said that West Melbourne, under our contract, needs permission from Melbourne to serve outside of its City. West Melbourne did not seek that permission.

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West Melbourne Manager Reynal disagreed and pointed out that the property is located in West Melbourne today. Mr. Schluckebier said that has been challenged by the Chapter 164 proceedings. West Melbourne Special Counsel Scott Glass commented that the annexation is valid until a court quashes it.

Mr. Soyka confirmed for Council Member Settgast that multiple properties will be affected by the waterline upgrade. Regarding sewer, Mr. Soyka displayed on the map where a sewerline is available, where improvements will be made and the possible location of a lift station. He stressed that these will be done regardless of whether Hesse is in or out.

West Melbourne Council Member Bill Mettrick pointed out that on this development and future development, the water situation is like a hostage. If West Melbourne moves farther out, both cities will be right back in this same situation at taxpayers' expense. Melbourne says that we can have the land, but we can't have the water. Yet, we have a contract for water.

Melbourne Manager Jack Schluckebier stated that Melbourne has not interfered with West Melbourne's annexation issues in any case where we didn't have a pre-existing agreement.

West Melbourne Manager David Reynal replied that is not true. West Melbourne has experienced difficulty in dealing with any water concurrency issues for months. West Melbourne recently received a letter from Mr. Schluckebier's office stating that Melbourne would not approve concurrency for a project that is in the process of being annexed into West Melbourne because it is not in the City limits today. That is interference.

West Melbourne Deputy Mayor Hal Rose said that he believes this property is a pawn for Melbourne. He added that he believes going farther west is on Melbourne staff's agenda.

Mr. Dantzler asked what the next piece should be if West Melbourne is given the annexation.

West Melbourne Council Member Settgast commented that Mr. Hesse and his engineers have access to both cities' plans; therefore, he should have the majority opinion about where his risks are minimal and where he wants to buy his services.

Mr. Dantzler referenced the agreement offered by West Melbourne that was not received very well by Melbourne. At Mr. Dantzler's request, West Melbourne Special Counsel Scott Glass reviewed the following offer from the July 12 meeting:

*Retail Potable Water Service:*

*West Melbourne exclusive service area: East of I-95, south of Ellis Road and north of the City of Palm Bay. Melbourne exclusive service area: West of I-95, south of Eau Gallie Boulevard, east of the St. Johns River and north of the northernmost point of the Villages Subdivision.*

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Sewer Service:

*West Melbourne exclusive service area: East of I-95, south of Ellis Road, north of the City of Palm Bay. Additionally the southwest quadrant located west of I-95, south of U. S. 192, north of the northern boundary of Palm Bay and east of the St. Johns River.*

*Northwest quadrant sewer service area: The parties would continue negotiating in the area located in the unincorporated area west of I-95, north of U. S. 192, east of the St. Johns River and south of Eau Gallie Boulevard.*

Annexation:

*Brookfield: Melbourne shall release the property. West Melbourne shall provide retail water and sewer service and Melbourne shall approve water concurrency.*

*Coastal Commerce: Melbourne shall not object to annexation into West Melbourne. West Melbourne shall provide retail water and sewer service and Melbourne shall approve water concurrency.*

*Tuck Ferrell/Dworkin Property: West Melbourne shall release this property from its obligation to obtain retail water service from West Melbourne. Melbourne shall provide retail water service and West Melbourne shall provide sewer service. Melbourne shall not object to its annexation into West Melbourne.*

*Other properties in southwest quadrant: West Melbourne agrees that no other property in southwest quadrant is being released from any existing pre-annexation agreement with Melbourne pending additional negotiation.*

*Properties in northwest quadrant: No properties in northwest quadrant are released by either party pending further negotiation.*

*Further negotiations: The parties shall meet with property owners to determine their desires and will continue to meet with each other at least once per month for no less than three months.*

Mr. Dantzler asked Melbourne to respond to the settlement offer. Melbourne Mayor Harry Goode referenced the outline and said it appears as if West Melbourne gets everything and Melbourne has to negotiate what is left.

Mr. Dantzler asked if there are any items on this list that fit the common sense test that Melbourne could agree to now. West Melbourne Council Member Settgest asked how we moved from the Hessee property into a discussion about hundreds of acres. Mr. Dantzler said that it is part of a settlement offered that was presented to Melbourne and it encompasses the Hessee property.

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Mrs. Palmer briefly discussed the breach of contract and said that whatever agreement is reached now, the cities should agree to not breach in the future without returning to the table.

West Melbourne Council Member Jan Lieson said that the “leapfrog” legislation is not right. This land is considered as being in West Melbourne; the property belongs in West Melbourne. Further, she stated that Mr. Hessee was unhappy with Melbourne so he approached West Melbourne.

Discussion continued.

Mrs. Lieson left the Chamber at 9:03 p.m.

Melbourne Manager Schluckebier noted that Melbourne has agreements on property located south of 192. With regard to the Tuck Ferrell property, Melbourne honored the agreement that owner has with West Melbourne as soon as it was made known.

A brief discussion continued on all of the issues and boundaries.

Mrs. Lieson returned to the Council Chamber at 9:06 p.m.

Mr. Dantzler said that all of these issues may have to be resolved in future mediation sessions.

Mr. Settgest said he thought the original Melbourne offer was annexation into West Melbourne with services by Melbourne. The West Melbourne offer was annexation into West Melbourne with sewer from West Melbourne and water from Melbourne. Both cities rejected; however, it sounds like the two offers have something in common.

Melbourne Vice Mayor LaRusso recalled that at a meeting on June 5 or June 6, there was a commitment made from both parties; however, Mr. Reynal later made a recommendation to his Council to not approve that. Mr. LaRusso recommended that both parties start at the point where there was a commitment and a handshake.

West Melbourne Manager David Reynal clarified that at a public meeting held at Melbourne City Hall, Melbourne proposed annexation of the Hessee property into West Melbourne and Melbourne would provide water and sewer service. Mr. Reynal stressed that they never shook hands or indicated they were in agreement with that proposal.

Mr. Dantzler said that regardless of the history, both sides agree that West Melbourne should get the annexation and Melbourne should get the water; neither side has resolved the sewer issue.

Melbourne Council Member Palmer asked if we have established at this meeting that Melbourne is able to provide sewer and West Melbourne is in the planning stages. Mr. Reynal replied no and Mr. Schluckebier said he believes we did in accordance with the terms of the contract. Mr. Dantzler said he believes we have established that West

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Melbourne is not in a position to provide it right away; it's all part of its short-term plan. Mr. Dantzler offered that there is a difference of opinion on this issue based on interpretation of the report. He said he needs someone from Melbourne who has the authority to definitively say that Melbourne has the ability to provide sewer now. He added that he is referring to the ability to transport.

Melbourne Mayor Goode said it is his understanding that Melbourne has the capacity to run the sewer up John Rodes Boulevard and the water is already there.

Mr. Dantzler recommended reaching resolution on this and holding in abeyance the "global fix" until we can get into mediation. He added that it all relates to the long-term view of what this part of the world will look like.

Mayor Goode said it is no secret that he has designs on that part of the world.

West Melbourne Council Member Charles Settgast recommended focusing on the sewer issue. He said that everyone has to be confident in the correct interpretation of the report. He pointed out that one approach could be to simply say it is Melbourne's responsibility and if Melbourne can't handle it, Melbourne will be in "deep effluent."

Mr. Dantzler asked who from Melbourne can answer the question about whether Melbourne can provide sewer service. Melbourne Public Works/Utilities Director Robert Klapproth stated that Melbourne can handle the original agreement of 28,000 gallons per day. Beyond that, we would have to make some upgrades to our transmission main; however, we can do that a lot sooner than West Melbourne.

Mr. Dantzler recapped: The property will annex into West Melbourne, Melbourne will provide water and he's hearing that Melbourne is in a position to provide sewer right away for the 28,000 gallons. He asked Mr. Hessee to comment.

Mr. Hessee said that at the previous Chapter 164 meeting there was discussion to increase the amount of capacity beyond the 28,000 gallons. Mr. Dantzler said that Melbourne Special Counsel Tom Cloud has said they are prepared to provide capacity for 260 units. Mr. Hessee agreed and said he needs 68,000 gallons per day.

West Melbourne Manager David Reynal said if we are going to do this, there is another property owner in the audience that is in a similar situation caught between Melbourne and West Melbourne. He suggested that if West Melbourne is going to concede sewer service, then we should take care of this other property. Mr. Reynal commented that if both parties can resolve the Hessee property and the Coastal Commerce property, it would be a major step forward. If West Melbourne can serve water to Hessee, Melbourne provide sewer service, and Melbourne sign concurrency on Coastal Commerce now, that would be an agreement he would recommend.

Both Councils briefly discussed whether to consider another property or to simply resolve the Hessee matter. Several members recommended a recess.

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Mayor Goode polled the Melbourne City Council and asked if Melbourne wants sewer service to this property. By consensus, the members said that they do.

Recessed: 9:29 p.m.  
Reconvened: 9:39 p.m.

Mr. Dantzler recognized Melbourne Special Counsel Tom Cloud to present an offer.

Mr. Cloud stated that his recommendation to Melbourne is that Melbourne would serve water and sewer to the Hessee property, West Melbourne would annex the Hessee property and the City of Melbourne would process bulk water supply to the Coastal property now. Further, Melbourne would like to continue the high level of discussions regarding future issues to maintain momentum.

Mr. Dantzler revealed that the Coastal property owner spoke to him during the break. He asked for his reaction.

Shad Cunningham, representing Coastal Commerce, stated that he would like for something to be resolved on the east side of I-95. They have been in the process for two years and are paying interest every day.

At West Melbourne Special Council Scott Glass's request, Attorney Cloud repeated the offer. Melbourne would provide retail water and wastewater to the Hessee property, West Melbourne would annex the Hessee property, and Melbourne would immediately process the bulk water request for West Melbourne to provide retail water to the Coastal property.

Mr. Dantzler said this is a serious offer. Melbourne Council Member Palmer added that we are talking about getting two property owners off the hook and letting them use their property that they have been unable to use up until now.

West Melbourne Manager Reynal asked if Melbourne would agree that if it cannot provide sewer to Mr. Hessee in the amount and time that he needs, then West Melbourne would serve the property. Mr. Cloud and Mayor Goode said they would agree to that.

Mr. Reynal asked Mr. Hessee to clearly state the amount of sewer capacity he is seeking. Mr. Hessee replied 68,000 gallons per day. Mr. Cloud confirmed that Melbourne can provide this and added that the capacity is for 260 units. Mayor Goode said that our Council would also agree that for whatever reason when the time comes if Melbourne doesn't have the capacity, West Melbourne can provide the sewer.

West Melbourne Special Counsel Scott Glass said when this same discussion occurred at Melbourne City Hall, Attorney Cloud agreed that Mr. Hessee would not be required to upgrade the six inch line.

Attorney Cloud confirmed that is the same deal that was sent on May 31.

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West Melbourne Manager David Reynal advised his Council that West Melbourne will be losing the tap fees from Mr. Hessee's property. West Melbourne will be paying the same cost for running water and sewerlines by his property without receiving revenue. It will be a hole in West Melbourne's project and that is why he did not recommend giving water and sewer to Melbourne before.

Mr. Reynal asked his staff if there are any other issues in terms of serving Coastal Commerce that West Melbourne needs from Melbourne. He confirmed that Coastal Commerce would come into West Melbourne and they will get water and sewer service from West Melbourne. West Melbourne Deputy City Manager Keith Mills added that the agreement needs to include that concurrency will be issued now.

Continuing, Mr. Reynal said that West Melbourne's contract with Coastal Commerce would prevail in terms of annexation and water and sewer service. Mr. Cloud agreed.

Mr. Reynal said if we can make Coastal Commerce happen and settle on Hessee, it would be a favorable deal for West Melbourne.

Mr. Glass said we need to also condition that on the parties agreeing to reconvene to discuss the other quadrants. Mr. Cloud agreed.

Ben Elliott, Plata Engineering, representing Craig Hessee, referenced notes he took at the Chapter 164 meeting relative to the Hessee property. They would be required to provide a lift station for their 260-unit project and would not be required to participate in any upgrade of the forcemain. In turn, that would delete the second agreement referred to by Melbourne. There was also a stipulation that the lift station for the Hessee property could be located for Hessee's needs and not the City of Melbourne's future needs.

Continuing, Mr. Elliott said that Item 3 of Mr. Cloud's May 31 letter is not accurate. He stressed that they want to ensure that they are not required to do any off site improvements and that the lift station can be sized strictly for the Hessee 260-unit project – not the grand scheme of a regional lift station.

Mr. Cloud said his understanding is that the lift station would be sized just for the Hessee project. However, there are other provisions of the latter agreement that apply and that are not solely related to off site issues. "Doing away" with the second agreement is not accurate. However, he does not have a problem with modifying Item 3 by saying that the lift station, size and cost required from Hessee would be limited to the 260-unit project.

Mr. Cloud confirmed that Hessee would not be required to participate in upsizing the John Rodes line.

West Melbourne Council Member Lieson stated that she is not in favor of this. She noted that it would be fair for West Melbourne to have the sewer while Melbourne takes the water. If Melbourne does not agree, then she believes West Melbourne should provide water on the east and west sides of the highway.

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West Melbourne Deputy Mayor Rose said that what is on the table is a win/win for the customers. He pointed out that West Melbourne is giving away sewer revenue and he doesn't know whether the offer is even; however, he can support the proposal.

West Melbourne Council Member Virginia Blanchard stated that she does not support the proposal. Her concern is that this is a Trojan horse in the middle of West Melbourne.

West Melbourne Council Member Charles Settgast said that West Melbourne is giving up more than we wanted, but he believes more will be lost if this process continues. He pointed out that Mr. Hessee has an escape hatch if the results of this meeting are documented properly; therefore, Mr. Hessee's liability will be limited.

West Melbourne Council Member Bill Mettrick agreed and said that West Melbourne is giving up a lot, yet he is willing to vote for that. He recommended both councils get together more often. Additionally, he suggested that future annexations consider what the property owners want.

West Melbourne Council Member John D'Amico said that he believes this is a good compromise and they should move forward. However, he does not feel West Melbourne is getting the proper share that it deserves.

Mayor Goode asked if anyone on the Melbourne City Council objected to the offer. There was no response.

Melbourne Council Member Palmer stated that both cities need to plan out the future so we are not breaching contracts and marketing ourselves to property owners.

Melbourne Council Member John Thomas thanked West Melbourne for its compromise and stated that it is a big step forward in the right direction.

West Melbourne Council Member Jan Lieson asked for a copy of the contract before it is finalized.

Mr. Cunningham stated that if there is a problem with the waterline, he would like the same opportunity (provided to Mr. Hessee). Melbourne Manager Jack Schluckebier clarified that Mr. Cunningham is asking for the right to come to Melbourne if West Melbourne can't give him timely service. Melbourne Special Legal Counsel Tom Cloud said it would be inappropriate for Melbourne to get into an issue that is a retail service provision issue for West Melbourne.

Attorney Glass thanked everyone for participating and stated that the lawyers will draft the agreement.

The question was called on the proposal. The roll call vote was:

**Melbourne**

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

**West Melbourne**

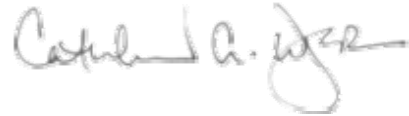
Aye: Rose, Settgest, D'Amico and Mettrick

Nay: Lieson and Blanchard

Mr. Dantzler announced that the proposal passes.

8. Adjournment

Mr. Dantzler thanked everyone for their attendance and adjourned the meeting at 10:06 p.m.



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Cathleen A. Wysor, City Clerk  
8/17/2007

Approved by Melbourne City Council: \_\_\_\_\_

Approved by West Melbourne City Council: \_\_\_\_\_