

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 9, 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.

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

4. Proclamations and Presentations

Mayor Goode presented a Certificate of Recognition to Harris Corporation “for outstanding economic contribution to our community through investment in capital and labor, resulting in the creation of 442 new local jobs.” The certificate was accepted by Cindy Kane, Director of Corporate Relations and Global Inclusion, Harris Corporation.

Mayor Goode presented a plaque to Eric Lewis for his volunteer service on the Architectural Review Board (July 1995 – June 2007).

5. Approval of Minutes - September 25, 2007 Special Meeting
- September 25, 2007 Regular Meeting

Moved by Contreras/LaRusso for approval of the minutes. Motion carried unanimously.

6. City Manager’s Report

City Manager Jack Schluckebier reminded Council that the Melbourne Police Community Relations Council will meet on October 11 at 7:00 p.m. (Grant Street Community Center).

7. Public Comments

Eric Ellebracht, 1948 Tyler Avenue, thanked Council for recently appointing him to the Citizens’ Advisory Board. He informed Council that he wanted to obtain a copy of the

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Melbourne Police Department's policies and procedures relating to the use of a taser; however, he was told that the cost would be 50¢ per page. Additionally, he contacted the Police Chief's office but has been "stonewalled." Mr. Ellebracht recommended that a citizens' review board be established to review every incident when a taser is used. He noted that he believes this would stop the taser from being used as a weapon of intimidation and would hold the officers accountable.

Michael Leasure, 1680 Vernon Dicks Drive, stated that Council Member Joanne Corby invited him to speak. He reported that he purchased his home in February and since that time he has been confronted daily by residents living behind him who use his yard to cut through to McClendon Street. He noted that he has sent e-mails to Council and talked to the police numerous times. He has tried to stop people in a polite way; however, last week he was threatened by a "thug." Mr. Leasure asked the City to construct a wall behind his home.

Attorney Gougelman said that Council Member Corby sent him and the City Manager an e-mail (on October 8) about this issue. Mr. Gougelman added that he advised Mr. Leasure that he and the City Manager would review this issue and try to come up with direction and assistance.

7.1 Presentation to Council: Update from Ron Sellers, Chief Executive Officer, Brevard Family of Housing Authorities.

Note: Mayor and Council received a packet of information dated October 9, 2007 from Mr. and Mrs. John Rumpel (representing the owner of the property), which outlines the purchase of Ramshur Towers, the lease extension negotiations and history.

Mr. Sellers advised Council that after months of arduous negotiations, they have determined that the Ramshur Towers lease cannot be extended. The lease will expire November 30, 2007. Mr. Sellers outlined the steps being taken to move the residents to area apartment complexes. The Housing Authority obtained relocation vouchers from the U. S. Department of Housing and Urban Development for all the residents.

Continuing, Mr. Sellers said that they met with nine property owners/managers last week. There are many vacant units in Melbourne and the managers of the complexes are excited that Ramshur Towers' residents may join them. Mr. Sellers elaborated on the communications with the City's Housing and Community Development staff and the residents of Ramshur Towers. The residents will also receive a briefing from the co-developers of the Silver Sands project.

Vice Mayor Mark LaRusso disclosed that he and the City Attorney met with John Rumpel and his wife on this date (representing the DeLorenzo Group – property owner of Ramshur Towers), and they heard an entirely different set of circumstances. Mr. LaRusso stated that his main concern is for the residents who live at Ramshur Towers. He recalled that when the sale of the property was announced, Mr. Sellers indicated that the residents would move one time. He pointed out that Mr. Sellers has previously reported that the extension of lease was being aggressively pursued and they were working toward common ground. He

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asked Mr. Sellers to outline where the breakdown in negotiations occurred.

Mr. Sellers replied that when they offered to sell the property in 2005, they made an assessment on the building that it had about 30 good months of life remaining. Had they been able to stay on their original development schedule, they would be moving now to Silver Sands. He referenced the ongoing investigation and stated that the development schedule slipped by 12-15 months. During that period, the building has continued to decline and deteriorate. Around the first of September, they had to make a critical decision about whether to leave the residents in the building during the extension of the lease, knowing the condition of the building, or move them out in an orderly fashion rather than during a catastrophic situation. Mr. Sellers stated that this was difficult for him because he had told the residents for several years that they would do their best to move them one time.

Mr. LaRusso asked how the residents feel now. Mr. Sellers replied that City staff attended a meeting today. The residents understand that the Housing Authority is there to help them. They accept the fact that they have to leave and they are relying on the Housing Authority to continue to provide for their needs.

Mr. LaRusso stressed that the City of Melbourne does not have jurisdiction over the Melbourne Housing Authority. The City appoints Melbourne Housing Authority members, but has no power.

Mr. Sellers expressed appreciation for assistance received from City staff, particularly from the Housing and Community Development Department.

Mr. LaRusso said that Mr. and Mrs. Rumpel believe that the negotiations have not been in good faith. He asked Mr. Sellers to comment.

Mr. Sellers said that all along they have negotiated for what is in the best interest of their residents. He asked that Attorney Michael Syme, representing the Housing Authority, offer comments.

Mayor Goode said that the agenda calls for Mr. Sellers to address Council and he plans on keeping it that way. He added that Mr. Sellers can convey what he or the Housing Authority has advised legal staff to do.

Mr. Sellers reported on the following: the landlord told the Housing Authority that if they wanted the lease extended, they needed to get rid of a (Ramshur Towers resident) that the landlord was having problems with; the Housing Authority was asked to pay for the landlord's legal fees to negotiate the extension; the Housing Authority was charged with the responsibility for obtaining dock permits; if the Authority was not successful in obtaining permits, they would be fined \$50,000; the monthly rent during the initial sale of the property was \$32,000 per month; the proposed rent increase was \$43,000; the property owner has no expenses – the Housing Authority pays the taxes and maintains the building. Mr. Sellers concluded by saying he doesn't find a standard for being accused of negotiating in bad faith.

Mr. LaRusso asked Mr. Sellers if in his opinion it is in the best interest of the residents to

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move between now and the completion of the Silver Sands development in Palm Bay. Mr. Sellers replied yes and added that the residents will be in a safe, healthy environment while Silver Sands is being constructed.

In response to Council Member Cheryl Palmer, Mr. Sellers confirmed that replacement of the docks, which were damaged during the hurricane season, was not a condition of the sale. He added that the seller was given a significant credit off of the original sales price to adjust for the docks being damaged.

Mrs. Palmer asked why the buildings are in such a deteriorated condition if the Housing Authority is responsible for maintenance of the building. Mr. Sellers noted that the units are more than livable; however, they are facing large system failures, such as plumbing.

Mrs. Palmer asked if the Housing Authority will handle the maintenance of the units the residents are moving into. Mr. Sellers said no, that will be handled by the property management company where the residents move. He commented that they have looked at all the units where the residents are moving and they feel comfortable about the properties, which are all significant upgrades from Ramshur Towers.

Council Member John Thomas said that groups of residents at Ramshur Towers have developed a network to help each other with transportation, etc. He asked if an attempt will be made to keep those groups together. Mr. Sellers replied yes and said that the residents have been advised that there are multiple units available at all sites. They can decide among themselves if they would like to move together.

Council Member Joanne Corby said that Mr. Sellers has indicated it is the Authority's responsibility to maintain Ramshur Towers. She asked Mr. Sellers if the Housing Authority's service contracts are paid and up to date.

Mr. Sellers said he believes the answer is yes. They have some vendors on a repayment agreement and they continue to do that as they await their allocation of capital funds for this current year.

Mrs. Corby referenced a letter dated July 13, 2007 from Mr. Sellers to one of the contractors indicating that the Authority still owes the contractor, who provided maintenance, \$148,253. She asked if that bill has been paid yet. Mr. Sellers said that is to Mr. Marco Deutelmoser (Moser Home Improvement Corporation). They have an agreement with him that says he will be paid by the end of the month. There was a subsequent letter assuring him that he would be paid by October 31 and they intend to honor that promise.

Mrs. Corby asked if it is a common practice of the Housing Authority to rack up such a large bill to a contractor. Mr. Sellers said it is not common, but they are not the only Housing Authority in the country that has payment agreements with its vendors.

Mr. Sellers confirmed for Mrs. Corby that the locations where the residents are moving are safe.

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Mr. LaRusso pointed out that one of the reasons for the repayment program is a result of an alleged embezzlement of funds and a subsequent investigation. That is when the Housing Authority went into a tailspin. Mr. Sellers agreed.

UNFINISHED BUSINESS

8. SITE PLAN APPROVAL (SP-2007-19) PARKWAY PLACE APARTMENTS: (Public Hearing) A request for site plan approval to allow a 216-unit multiple-family apartment project at a density of 14.66 units per acre on a 14.73-acre site zoned R-2 (15) (One-, Two-, and Multiple-Family Medium Density Residential with a cap of 15 units per acre), located on the southeast corner of Parkway Drive and Wickham Road. (Owner - Wickham Park, LLC) (Applicant - The Richmond Group of Florida, Inc.) (Representative - Matthew Soyka, Soyka Engineering & Associates, Inc.) (Postponed - 9/11/07)

The following is an excerpt from the agenda report:

The proposed site plan is essentially the same as the original site plan for 216 apartment units at a density of 14.66 units per acre. A total of 445 parking spaces is proposed, along with on-site recreational amenities. A minimum 82-foot setback is proposed to the east and a minimum 79-foot setback is proposed to the south.

Previous conditions requiring the applicant to dedicate and construct a northbound right turn lane on Wickham Road onto Parkway Drive are being carried over to this approval. Additionally, capacity reservation fees were paid in January 2007 for 152 units, and the difference between the proposed 216 units will be collected upon this approval.

The Planning and Zoning Board voted unanimously to recommend approval of this request and staff previously had also recommended approval. Subsequently, communications and petitions from neighboring properties expressed concerns and are included in the agenda materials.

This item was postponed at the September 11 Council meeting to allow staff time to provide Council with the Police Department precinct reports for the areas that border Lake Washington Road, Croton Road, Parkway Drive and Wickham Road. Council also requested the number of police calls to Manatee Cove and Wickham Club Apartments over the last year. The Police Department provided the Apartment Complex Crime Report (included in the agenda package) for the period of September 14, 2006 through September 14, 2007. The agenda materials also include copies of information on crime activity from June 1 through August 30, 2007 for Lakepointe Apartments, Park Village Apartments, Rivercrest Apartments, and Wickham Club Apartments that were requested by the applicant, The Richman Group of Florida, Inc.

Further recommendations are withdrawn pending full Council review of various issues of concern.

Prior to opening the public hearing, Mayor Goode referenced the additional information distributed to Council. In addition to the correspondence and petitions contained in the

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agenda package, Council received the following: Memorandum from City Attorney Paul Gougelman dated October 5 transmitting a letter dated October 4 from Attorney Robert Krawcheck (representing the Richman Group). Mr. Krawcheck references the Federal Fair Housing Act, the Florida Fair Housing Act and the Federal Civil Rights Act. Attorney Gougelman indicates in his memo to Council that he will address this during the Council meeting.

Council also received the following from residents opposed to the request: Letter dated October 9 from Harold Hurlbut, Jr., 2653 Elliot Way; petition submitted October 9 from 16 residents of Harbor Green and two residents from Longwood Subdivision; petition submitted October 9 from 51 residents of Sun 'N Green Condominium Association, 2727 North Wickham Road; e-mail dated October 7 from William Hunter, referencing and clarifying his earlier correspondence; e-mail dated October 6 from Tina Reyes, 2600 Lowell Circle; e-mail dated October 5 from Joel and Debbie Crisafulli, 2608 Lowell Circle; e-mail dated October 4 from Randy Straley, 2612 Lowell Circle; letter received October 4 from Peter Mattiace, 2664 Lowell Circle; and e-mail dated October 4 from Richard Nink, 3035 Gentle Breezes Court.

Council Member Richard Contreras said that there are citizens here who were not at the first public hearing. He asked Planning and Economic Development Director Cindy Dittmer to provide a brief synopsis.

Mayor Goode asked Attorney Gougelman to comment on Council's responsibilities with regard to a site plan. Attorney Gougelman said that the scope of review on a site plan is narrow. There is a set of standards in the City Code dealing with site plan approval. The Florida Supreme Court tells us that based on the evidence, if the applicant is in compliance with the site plan criteria, the plan must be approved. If the applicant is not in compliance with the site plan criteria, the plan cannot be approved. Some of the criteria deal with examination of density, ingress/egress, compatibility, lighting, etc.

Mrs. Dittmer briefed Council on the request and provided an overview.

Mayor Goode asked the applicant's representative to come forward.

Cliff Repperger, attorney representing the applicant, 1800 West Hibiscus Boulevard, stated that the applicant is requesting this matter be tabled to allow time to address issues that were raised at the last meeting. They would also like to meet with any affected parties of interest, including concerned neighbors, to see if they can address concerns regarding the development. Additionally, the applicant has recently retained substitute counsel from Miami, Robert Krawcheck of Bilzin Sumberg Baena Price & Axelrod, LLP. Attorney Repperger said that Mr. Krawcheck would like an opportunity to evaluate the evidence in this case because he will be addressing any subsequent legal matters that may arise out of Council's consideration.

Mr. Repperger stated that the applicant would like this item tabled until November 27. Although the applicant does not plan on presenting any evidence at this meeting, to the extent that Council hears evidence from the public at this meeting, they would like to

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assert that they are not waiving any objection or motion regarding the issues presented in testimony at this meeting. Mr. Repperger submitted a letter from Mr. Krawcheck to the Mayor and City Council preserving any and all objections related to any testimony that will be heard at this meeting.

Attorney Gougelman said that if they are going to reserve any right to objections or to make motions, the City would like to do so as well. Mayor Goode replied, so be it.

The Mayor announced that without objection, this item will be (postponed) until November 27.

Mayor Goode advised the audience that this item will be heard on November 27. The applicant has indicated that they would like to meet with the various homeowners' groups to address these issues. The Mayor said if it is the pleasure of Council, he will open the public hearing. He reminded the speakers to have a limited number of spokespersons.

Continuing, Mayor Goode said that this is an issue that Council does not have a lot of control over. He reminded the audience that anyone who speaks tonight will not be eligible to speak on November 27.

Mr. Contreras said that we probably shouldn't say that people can't speak again, especially if they have additional evidence to present. Mr. Contreras requested Council disclosures before opening the public hearing.

Mr. Contreras reported that he spoke with the following, who are opposed: Jim Stratford, Weston Park Homes Subdivision; Robert Stewart, Weston Park Townhomes Subdivision; and Tom Stauffacher, Weston Park Homes Subdivision. Additionally, he requested information on this matter from City Manager Jack Schluckebier and City Attorney Paul Gougelman. In addition to the correspondence and petition in the agenda package, Mr. Contreras received a letter from Trudee Kirkpatrick, 2620 Lowell Circle, who is opposed.

Mrs. Corby said she received two telephone calls, one from Joel Crisafulli and one from Hugh Evans, Sr., both expressing displeasure with this project.

At this point, Mayor Goode referenced the additional correspondence Council received on this item (noted above).

Mayor Goode opened the public hearing.

Thomas McIntee, attorney representing the Weston Village Homeowners' Association, said he is happy that the applicant wants to reach out to the neighbors. He noted that with this issue, Council has the unique opportunity of hindsight. A couple of years ago an identical project (Wickham Club Apartments) was presented by a developer who painted a rosy picture for Council. Reassuring promises were made, and there were discussions about safeguards to take care of the negative impacts. Unfortunately that did not pan out. The developer of the subject property has painted a rosy picture, made reassuring

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promises, indicated they have substantial experience and assured they can implement safeguards to take care of the negative impacts on the neighbors.

Mr. McIntee stated that the developer is entitled to make a profit and affordable housing is in the community interest; nobody is against affordable housing. They are, however, concerned about negative impacts of a particular project on their neighborhood. The residents believe there is a tremendous amount of incompatibility with this project as proposed. The residents are concerned about change from homeownership to renting and public safety.

Continuing, Attorney McIntee discussed the number of police calls, traffic and congestion after Wickham Club was constructed. He noted that the residents who have signed up to speak will address traffic, congestion, and quality of life issues. He concluded by asking Council to listen closely to the citizens' heartfelt concerns.

Mayor Goode reminded Mr. McIntee that if citizens speak tonight, he is not going to recognize them on November 27.

Mrs. Corby stated that a person has a right to speak more than once; it's our First Amendment right to speak. Mayor Goode pointed out that the City Council has rules and regulations. Mrs. Corby replied that an idea and four votes can change that.

Following an outburst from the audience, the Mayor explained that he is charged with the responsibility of running a meeting in accordance with Robert's Rules of Order and Council's rules. He stated that his personal input is not important. What is important is keeping some semblance of order.

There was another outburst from the audience. Mayor Goode said that there is no need to sit here two months before the item will be heard and go through a two-hour public hearing, just to return again and do the same thing after the applicants have done whatever they are going to do. He noted that he has asked for representatives to shorten the time it takes because there are a lot of people here tonight for other items on the agenda. He added that the City owes them the courtesy and a chance to be heard at this meeting, too.

Mrs. Corby said she understands that and she appreciates the way the Mayor keeps the meeting on track. Her point is that people have the right to speak and if they have information that is different between now and November, a better approach would be instead of saying "I'm not going to allow you to speak" to ask for keeping comments short, don't repeat and have a representative. But, it is totally unacceptable for us as elected officials to tell someone they can't speak.

Attorney McIntee informed Council that they intend to reserve their speakers until November. They would like to discuss these issues with the other counsel and try to work the best they can with the other side.

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Mayor Goode said he wasn't trying to keep anyone from speaking. He noted that this is a controversial issue that won't be decided tonight, and he's trying to avoid litigation for the City.

Mrs. Corby recommended that people leaving the room stay until the end of the item so they don't miss any information provided that may be important. Mr. Contreras asked the people in the audience who are here for this item to stand. (The majority of the audience stood.)

Mr. Thomas pointed out that Thanksgiving (November 22) could affect the turnout at the November 27 meeting. He asked if the representative for the developer would consider postponing this item until the first meeting in December (December 11). Mr. Repperger responded that they have no objection to postponing this item until December 11.

Mayor Goode continued with the public hearing. He called the names of citizens who had signed up to speak. Most waived speaking at this meeting. The following came forward:

David Sandberg, 2983 St. Helen's Way, distributed a summary sheet to Mayor and Council listing the apartments, condominiums and townhomes on Parkway Drive, Croton Road, Lake Washington Road and Wickham Road. He pointed out that within one square mile, there are 17 multi-family units. Currently 10 out of the 17 are advertising rental availability. There has been significant growth in family housing and commercial development between Lake Washington Road and the Pineda Causeway. This has saturated the area and caused a lot of traffic problems.

Mr. Sandberg said he doesn't have any problem with the developer making money; however, in a slow housing market the only thing 216 housing units will do is impact the area. Mr. Sandberg concluded by saying that it is Council's responsibility to provide oversight and planning guidance so there won't be impacts to long-term residents.

Lee Jones, 2484 Coral Ridge Circle, director, James Landing Homeowners' Association, stated that he is representing the president of the homeowners' association. Mr. Jones reported that his association represents 221 single-family homes and every owner vehemently objects to another low-income project being built in their corner of the world. He reported that adjacent to them is the low-income apartment complex known as Hampton Greens. That development is the source of more than 80% of their complaints to the Police Department every year, including noise, trespassing, motor vehicle violations, etc. He discussed the demographics of the neighborhood, their tax base and asked for consideration to prevent placement of a low-income housing development next to them.

Continuing, Mr. Jones said the Wickham Club complex is located south of the proposed development at Parkway Drive and Wickham Road. He said he believes Council is well aware of the crime element occurring there, even though the development is just over two years old. There are two low-income complexes in their immediate area and this seems excessive considering that a good part of the block is taken up by a municipal golf

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course. Mr. Jones asked Council to deny this request to change construction to low income apartments.

Gloria Robinson, 2569 Alicia Lane, secretary, James Landing Homeowners' Association, reported that they currently have two similar complexes in their immediate neighborhood – Hampton Greens and Wickham Club Apartments. Both provide problems to their neighborhood. They talked to management many times; however, they are not able to control the problems. The addition of another complex in this area will place them beyond the saturation point.

Continuing, Ms. Robinson said the placement of three apartment complexes in the area will start competitive gang crime between these groups. If affordable housing is dispersed throughout Melbourne instead of concentrated in one area, it will provide a better environment for children. Ms. Robinson discussed the traffic volume on Wickham Road and said the development will add to the problem. She urged Council to deny the request and said that the developer should either build the condominiums that were previously approved or build something appropriate for the area.

Mayor Goode said the last couple of speakers have mentioned affordable housing. He asked the City Attorney to explain the rules and regulations the federal government has with regard to affordable housing.

Attorney Gougelman stated that Council has no control over whether something is low income or not. To the same extent, they have no control over whether something is rental versus condominium. There are two laws of concern to the Council. One is the Federal Fair Housing Act and the other is the Florida Fair Housing Act. The Florida Fair Housing Act has a specific provision that states you cannot use land use decisions to influence housing when they are based on race, color, national origin, sex, disability, familial status, religion or source of funding. If there are state grants, loans or federal grants and aids being used for low-income housing, you cannot use a land use decision to discriminate against that project.

Attorney Gougelman added that the Federal Fair Housing Act is not as specific, but we face the same issues with regard to it. This also goes back to the type of permitting procedure – this is a site plan proceeding. Council has to look at the very narrow criteria in the Code to determine whether or not to approve the project. He concluded by saying the bottom line is that the City can't control whether something is or isn't low-income housing and whether something is rental or is condominium. These issues are not within the City's purview.

Mr. LaRusso asked if the City can control density and Attorney Gougelman replied yes.

Mayor Goode continued with the public hearing.

William Ward, 3040-2 Clear Lake Drive, said he has been asked to speak on behalf of members of the Weston Park Association. He informed Council that when Wickham Club Apartments was being built, he wrote a letter to the Engineering Department asking that

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speed bumps be placed on their street because they were plagued with people who use it for a “Daytona-type” operation. He added that they are still inundated with traffic and speed violators daily and nightly.

Mr. Ward elaborated on vandalism and incidents they have experienced in their neighborhood. Regarding compatibility, Mr. Ward said these people aren’t compatible if another complex is added to the area. He stated that residents can’t exit their subdivision now because of the traffic. He said he thinks the City Attorney should find some way to turn this down.

Mayor Goode closed the public hearing and said that this item will return on December 11.

Mrs. Corby said she has questions that she would like placed on the record for Cliff Repperger. She said that originally this project came before the Council and was approved in 2005. On April 25, 2006, the item returned for a change and Mr. Repperger made a statement at that time that the new project was an “upgrade” from the project approved the previous year. She asked Mr. Repperger why they have decided to change back to the old project.

Mr. Repperger stated that the applicant doesn’t want to present any evidence at this meeting. He noted that he will answer the question in deference to Mrs. Corby.

Attorney Repperger said that perhaps it was out of context to say the project as proposed before was not a nice project. It was different in that they were lowering the density. To the extent that he referred to that as an upgrade was a mistake on his part. He did not mean to say that it was not an acceptable project in its original format.

Mrs. Corby said that originally the project was 216 units and maybe the point in saying “upgrade” was that they were lowering the density from 14.77 units per acre to 10.2 units per acre. She added that Damon Cole also spoke at that meeting. She asked if he is still part of the firm. Mr. Repperger replied yes and noted that Damon Cole is a development representative with the Richman Group. Mrs. Corby said that Mr. Cole stated that these units would be at market value, approximately \$200,000 - \$300,000.

Mrs. Corby asked for her following statement to be part of the record: It was brought to the Council’s attention that this project falls under the Sadowski Act. The Sadowski Act was established in 1992 and is part of Florida State Statutes 420. It’s also part of House Bill 212 labeled “workforce housing.” Originally when this Act was established, the thought process behind the trust funding was, as housing costs increased, doc stamp revenues, which fund the trust fund, would increase. Since 1992 when the trust fund was established, the Sadowski Trust Fund has earned \$1.8 billion. For the fiscal year 2006-2007 the appropriations from this trust fund were \$480 million, leaving approximately \$520 million in the trust fund. Our need is greater than the \$520 million we have. In July 2007 a distribution cap was placed on the trust fund. That distribution cap was placed and set at \$243 million. We know the theory that was behind the trust fund when it was established; however, that theory isn’t going to apply in today’s market. The market is

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down. There is good news, though. The Legislature is aware of this; they know the Sadowski Act is broken. They also know that when the Act was established there was a four-year review requirement. The next review process comes up in April 2008. The Legislature will review the Sadowski Act, the funding – and it falls under the Fair Housing Act – and how those funds would be distributed. There are lots of problems with the funding, along with other issues that are attached, how we hold people accountable, how we can collect the funds after the home is sold, etc.

Mrs. Corby concluded by making the following motion:

Moved by Corby/Contreras to not just (postpone) this item until December, but (postpone) this item based on the unsettling funding distribution of the Sadowski Act at least until April 2008.

Mr. Repperger stated that the applicant would object to that length of (postponement) based in part on the Fair Housing Act and things that this Council can consider during review of a site plan, which do not include funding sources.

Council Member Thomas asked the City Attorney to comment on Mrs. Corby's statement.

Attorney Gougelman referenced the end of the letter from Mr. Krawcheck. He raised a concern regarding any further delays with regard to consideration of their site plan. Mr. Gougelman said he discussed with the applicant's attorneys today the possibility of continuing the public hearing until a later date. The applicant's attorneys asked him if he would feel comfortable asking for that continuance and his response was no. One of the reasons is that in their letter they pointed out to Council that further delays could subject the City to litigation. Therefore, any continuance requested would be up the applicant.

The applicant has agreed to postpone to December 11 and if it is going to be delayed longer than that, the applicant is telling you that may cause them to take further action.

Mrs. Corby asked Mr. Repperger if they updated their traffic study since 2005. Mr. Repperger replied no. Mrs. Dittmer explained that the traffic study submitted with 216 units still stands and they are still vested for those trips. Discussion about traffic generation followed and Mayor Goode called the conversation out of order based on the motion on the floor.

Mr. LaRusso said that the tone of the letter from Robert Krawcheck is disheartening. He encouraged the applicant to return on whatever date. Additionally, either way we are going to get sued; therefore, he will support the motion.

The question was called. The roll call vote was:

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

Motion carried unanimously.

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Mayor Goode announced that this item is postponed until late April.

Mr. Contreras asked Mr. Repperger to enlighten Mayor and Council and the citizens about the strategy for addressing the issues. Mr. Repperger said he does not know what the plan is at this point. They are currently evaluating what happened last time. The applicant recently retained Mr. Krawcheck; they are evaluating legal issues. They want to be good neighbors, they recognize there are concerns, and they want to try and address those concerns.

Recessed: 8:00 p.m.

Reconvened: 8:10 p.m.

9. ORDINANCE NO. 2007-75, CITY PROPERTY: (Second Reading/Public Hearing) An ordinance amending Chapter 2, Article VIII of the City of Melbourne Code entitled "Disposition of Real Property, by providing for standards and procedures for the sale, lease or other disposition of property owned by the City. (First Reading - 9/11/07)

Attorney Gougelman read Ordinance No. 2007-75 by title. There were no public comments.

Moved by Thomas/Contreras for approval of Ordinance No. 2007-75. The roll call vote was:

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

Motion carried unanimously.

10. ORDINANCE NO. 2007-77 (CU-2007-08/SP-2007-20) RACETRAC PARKING EXPANSION: (Second Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow additional parking at an existing gas station/convenience store on a 1.61-acre parcel zoned C-C-P (Commercial Parkway), located on the south side of Eau Gallie Boulevard, east of I-95, and west of John Rodes Boulevard. (Owner - Rod Longman) (Applicant - RaceTrac Petroleum, Inc.) (Representative - John Moody, P.E. Osceola Engineering, Inc.) (First Reading - 9/25/07)

The City Attorney read the ordinance by title. There were no disclosures made by Council and no public comments.

Moved by Meehan/LaRusso for approval of Ordinance No. 2007-77 based upon the findings and conditions contained in the Planning and Zoning Board memorandum. The roll call vote was:

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

Motion carried unanimously.

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NEW BUSINESS

11. COUNCIL ACTION RE: Contract award for the Professional Engineering Services associated with managing the water system-wide Unidirectional Flushing Program (UDF), Project No. 31306, Reiss Environmental, Inc., Orlando, FL - not to exceed \$250,000.

Assistant Public Works and Utilities Director Harold Nantz said that this is the final piece of the puzzle regarding implementation of the City-wide unidirectional flushing program. Reiss Environmental will manage and coordinate all aspects of the project, manage the contractor, assist with public notification, provide periodic reports to City staff on the progress, and assess the overall efficiency and effectiveness of the program.

Mr. Thomas asked what form of communication will be used to notify residents. Mr. Nantz replied that is being defined; however, they will probably provide a mailer to each resident two to three weeks in advance of being in the area. Potentially, there will be signage providing reminders. Staff will be assisting the contractors with this work; it will be a team effort. Mr. Nantz confirmed that the cost of the mailers is included in the contractor's costs, which have been approved by City Council.

Moved by Palmer/Meehan for approval of a contract with Reiss Environmental, Inc. for Professional Engineering Services required to manage the water system-wide Unidirectional Flushing Program for a not-to-exceed contract amount of \$250,000. The roll call vote was:

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

Motion carried unanimously.

12. COUNCIL ACTION RE: Contract award for the waterline replacements at various locations, Project No. 30299, Atlantic Development of Cocoa, Inc., Cocoa, FL - \$559,426.14 and transfer of \$124,370 from Water & Sewer Miscellaneous Capital Improvements, Project No. 30099 to supplement this project budget.

City Engineer Jenni Lamb briefed Council. Mr. Thomas asked if there will be an impact on traffic at New Haven Avenue and Babcock Street. Mrs. Lamb replied that there should not be because the lines are located on the side streets.

Moved by LaRusso/Contreras for approval of the construction contract with Atlantic Development of Cocoa, Inc. in the amount of \$559,426.14 for the Waterline Replacement – Various Locations (2006) and a budget transfer of \$124,370 from Water & Sewer Capital Improvement – Miscellaneous Project No. 30099 to supplement this project budget. Motion carried unanimously.

13. CONSENT AGENDA:

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

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- a. Approval of an Interlocal Agreement between the City of Melbourne, the City of Cocoa Beach, the City of Cocoa, the City of Titusville, the City of Palm Bay, the City of Rockledge, the City of West Melbourne, the City of Cape Canaveral, and Brevard County for funding of a Phase II study to examine the use of methane gas and/or potential waste heat for the proposed regional biosolids treatment facility; allocation of \$10,058 from the D.B. Lee/Grant - Biosolids Stability Study Capital Improvement Project No. 35304 for the City's prorated share; and authorization for the City Manager to execute the agreement.
- b. Change Order No. One to the contract for the replacement of a storm drain at Melbourne High School, Project No. 64206, Don Luchetti Construction, Inc., Melbourne, FL - \$35,684.
- c. Contract award for the purchase and delivery of Sodium Hydroxide (50% Rayon Grade Caustic Soda), Allied Universal Corporation, Miami, FL - at the unit price of \$1.598/gallon; estimated annual cost of \$994,510.51.
- d. Approval of continuing MUNIS software maintenance support and licensing update, Tyler Technologies, Inc., Falmouth, ME - \$102,429.86.
- e. Contract award for the design and installation of fire alarm systems for six City of Melbourne fire stations, Advanced Detection Systems, Inc., Melbourne, FL - \$66,387.35.
- f. Contract award for the purchase of fire/code uniforms, Design Lab, Inc., Greenville, SC - estimated annual cost of \$54,255.01.
- g. Approval of revisions to existing policies for City Housing Assistance Programs and new policies for the Purchase Assistance with Sweat Equity Program and Accessibility Assistance Program.
- h. Resolution No. 2057: A resolution authorizing the City Manager to submit a grant application to the Florida Department of Financial Services for grant funding in the amount of \$500,000 through the My Safe Florida Home Program to implement a financial assistance program to facilitate home hardening improvements and authorization for the City Manager to execute related documents.
- i. Resolution No. 2058: A resolution updating the schedule of miscellaneous fees authorized by Section 2-216 of the City Code; providing for a legal advertisement fee, a building permit surcharge fee, and supplementing the administrative fees.

14. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

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15. SITE PLAN APPROVAL (SP-2007-23) PINE CREEK MEADOWS APARTMENTS: (Public Hearing) A request for site plan approval to allow a development of a 196-unit multiple-family apartment complex on a 17.6-acre parcel at a density of 11.14 units per acre zoned R-2 (6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre), located on the east side of Dairy Road, north of Eber Boulevard. (Owner - Hacienda Holdings, LLC) (Applicant - Francisco Espinoza) (Representative - Jake Wise, PE, Construction Engineering Group) (P&Z Board - 9/20/07)

Mrs. Dittmer reviewed the agenda report and located the property on the map. Due to a previous PUD development plan (which provided for six units per acre) on a larger overall parcel, an overall density allowance permits this parcel to exceed the current density. The previously developed parcel, Pine Creek Subdivision, was constructed at significantly less than six units per acre. The density allowance provides for a maximum of 196 units to be constructed on this 17.6-acre parcel.

The Planning and Zoning Board voted unanimously to recommend approval of the two-page site plan prepared by Construction Engineering Group, with Project Number 070201, signed, sealed, and dated September 11, 2007, subject to the following conditions:

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

Any substantial change to the site plan as outlined in Appendix B, Article IX, Section 6 (E), will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.
- b. The maximum number of units allowed for this property is 196 residential units.
- c. Appropriate environmental permits, including permitting for the gopher tortoises, must be obtained as part of the construction plan review process.
- d. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- e. In conjunction with the development of this project, the applicant shall provide a right-turn/deceleration lane onto Dairy Road, if permitted by Brevard County and the City Engineering Department during the construction plan review process.
- f. Any request to change to the square footage of the buildings or the amount of impervious shall be reviewed for consistency with the maximum impervious of 65% within the aquifer recharge area.
- g. The proposed buildings shall be substantially consistent with the rendering submitted by the applicant.

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- h. As required by Chapter 10, Appendix D, and Chapter 32, Melbourne City Code, to reserve capacity, the owner/developer shall be required to pay the capacity reservation fee in the amount of \$105,911.20 for transportation, water and sewer impact fees. Payment must be received by the City of Melbourne within 10 business days of the date of rendition of the Development Order by City Council. The Development Order shall not become effective until payment of the capacity reservation fee has been made payable to and received by the City of Melbourne.

Mr. LaRusso asked about the density change. Mrs. Dittmer reviewed the history and said that the overall density allowance for the entire property was six units per acre. Pine Creek Subdivision developed at approximately three units per acre. It left an allowance for 196 units for this property, resulting in an overall density of six units per acre. Mr. LaRusso asked the actual density of the vacant property and Mrs. Dittmer replied 11.14 units per acre. Mr. LaRusso asked if lost density can be transferred to another property. Mrs. Dittmer replied yes and noted that there is quite a paper trail on this property dating back to the early 1980s. The density allowance has been carried over from that time. Mr. LaRusso commented that the density bothers him.

In response to Mr. LaRusso, Mrs. Dittmer confirmed that the applicant will have to obtain all the environmental permits from the proper agencies; that is a condition of approval.

Mayor Goode called for disclosures. There were none. The Mayor opened the public hearing.

Jake Wise, civil engineer representing the project, stated that this is a very different, “class A” apartment complex. He noted the amenities will include a nine-hole golf course, plush clubhouse, pool facility, tennis courts, playgrounds, etc.; this will be a gated facility with easy access off Dairy Road; and there will be secondary access for residents only on Eber Boulevard. They met with neighbors to the east and north, who supported the project after the limited Eber Boulevard access was explained.

Mr. Wise said that the adjacent residents wanted a condition of approval that they would fence the property. They are happy to make that a condition. It will be a six-foot high, opaque residential style fence with landscaping.

Mr. Wise elaborated on the buffering and setbacks. He said that they have met with staff and are proposing to put in a City lift station that will be shared with the commercial development proposed to the south. He noted that 196 units seems like a lot; however, the site plan shows a lot of green space. They are only about 43% impervious, which is very low.

Continuing, Mr. Wise said that the fence along Dairy Road will be pulled back an average 20’ to allow landscaping. Regarding species, there are no scrub jays on the property, but there are some gopher tortoises. The gopher tortoises will be moved off site to another location. He concluded by saying the site meets all land development code requirements and they agree with the conditions.

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Mrs. Palmer asked the distance between the closest three-story building to the nearest single family structure. Mr. Wise replied about 256'. Additionally, he elaborated on the buffers for Mrs. Palmer.

Mr. Contreras referenced the commercial parcel on the southwest corner and asked if anything is proposed. Mrs. Dittmer replied that the City Council recently denied a request for a gas station on this parcel. She confirmed that C-1, neighborhood commercial, abuts the subject property.

Mrs. Palmer asked how difficult it would be for the golf course to be removed to allow more buildings and density. Mrs. Dittmer said two things would not permit that – the past allowances for density permit 196 units total and the land use on the property.

Mr. LaRusso asked Mr. Wise if he would be willing to lower the density. Mr. Wise said that the owner purchased the property based on the allowable density. It is a tough market now and all of the amenities are expensive. Removing density could lead to failure of the development.

Pat Poole, 805 E. Palmetto Avenue, discussed the history of the property and said she is opposed to leftover density being given to another property. Additionally, she pointed out that the property being given the density is not compatible with the area.

Mrs. Corby asked Mrs. Poole if in all of her years of experience (on the City Council) if she recalled density being carried over. Mrs. Poole replied that this is the first time she has ever seen this.

Mr. Wise referenced the comment about compatibility. He said that they met with the adjacent neighbors and no one expressed concern about compatibility. There are substantial buffers and this provides good transitional zoning from the single-family area to the commercial area. There are similar densities farther south along this section of Dairy Road and they feel they are compatible.

Regarding the comment about a “class A” apartment complex, Mrs. Palmer asked Mr. Wise if he is referring to amenities and not the residents. Mr. Wise said that is correct; it relates to levels of rent. He added that they can’t associate money with quality of people.

Mayor Goode closed the public hearing.

Moved by Meehan/Contreras for approval of the site plan based upon the findings and conditions contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: Contreras, Meehan, Thomas and Goode

Nay: Palmer, Corby and LaRusso

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Motion carried.

16. SITE PLAN APPROVAL (SP-2007-26) 100 NORTH BABCOCK STREET EXPANSION: (Public Hearing) A request for site plan approval to allow the expansion of an existing 137,408 square foot office/laboratory/assembly project, including 125,000 square feet of new office and laboratories and 33,000 square feet of additional storage on a 20.13±-acre parcel zoned C-2 (General Commercial), located on the west side of Babcock Street, north of Brevard Drive, and south of Charles Street. (Owner/Applicant - Sutton Properties, LLP) (Representative - Jake Wise, PE, Construction Engineering Group) (P&Z Board - 9/20/07)

Mrs. Dittmer reviewed the agenda report and located the property on the map. The Planning and Zoning Board voted unanimously to recommend approval of SP-2007-26 as presented on a two-sheet plan prepared by Construction Engineering Group, of Melbourne, Florida, Project Number 070145, with a signed and sealed date of September 6, 2007, subject to the following conditions:

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

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

- b. The applicant shall provide a right-turn/taper into the project from Babcock Street, as determined/permitted by the City Engineering Department during the construction plan review process.
- c. Appropriate environmental permits must be obtained as part of the construction plan review process.
- d. The applicant will be required to acquire variances for the right-of-way landscaping and interior landscaping requirements.
- e. The applicant shall obtain a right-of-way use agreement from the City Council to plant/maintain the landscaping on the west side of Babcock Street and the north side of Brevard Drive, in lieu of removing existing parking and drive aisles to provide code-complying landscaping on the property. Such plantings shall be consistent with the Babcock Street CRA right-of-way Improvement program currently underway. The applicant will be required to obtain a right-of-way use agreement from the City Council, prior to construction plan approval.
- f. The applicant is required to obtain Architectural Review Board approval prior to construction plan approval.
- g. The proposed building shall be substantially consistent with the rendering submitted by the applicant.

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- h. As required by Chapter 10, Appendix D, and Chapter 32, Melbourne City Code, to reserve capacity, the owner/developer shall be required to pay the capacity reservation fee (10%) in the amount of \$4,294.41 for transportation, water and sewer impact fees. Payment must be received by the City of Melbourne within 10 business days of the date of rendition of the Development Order by City Council. The transportation, water and sewer capacity reservation shall not become effective until payment of the capacity reservation fee has been made payable to and received by the City of Melbourne. Failure to have reserved capacity shall be a basis for withdrawing approval of this development order.

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

Jake Wise, civil engineer for the project, displayed the site plan and pointed out that the current owner added a beautiful facade to the building and a boulevard entrance with landscaping. He discussed the proposed expansion on site and noted that they obtained a variance for landscaping. This will allow the landscaping to be installed with the right-of-way with a use agreement. It will create a wide green area along the perimeter.

Mr. Wise reported that they met with almost every single-family homeowner to the north. The majority prefers the Code required wall rather than a fence. The residents were concerned with traffic but once the deceleration lane and ingress/egress from the site were explained, they did not seem to have an issue. The site will offer about three times the minimum setback from the residents. They will preserve as much of the existing vegetation and enhance the site with additional trees. The site meets all land development codes and concurrency requirements. Additionally, they agree with the conditions.

James Richardson, 300 West Charles Drive, stated that he has a problem with the entrance on Charles Drive. It is unnecessary and will damage the residential community. Mr. Richardson pointed out that the applicant spoke with residents whose properties will abut the wall; however, he didn't make anyone aware in the Almar Subdivision that this was being considered.

Mr. Richardson discussed the number of employees that will be driving to work in the morning to this location. They will take the path of least resistance, passing bus stops and doing whatever it takes to get to work on time. He noted that there are enough other entrances to this property; safety should not be chanced. He concluded by asking for the natural vegetation on site to be saved.

Mrs. Meehan asked Mr. Richardson if he attended the Planning and Zoning Board meeting on this item. Mr. Richardson said he was not aware of that meeting.

Mr. Wise explained that the project with the entrance on Charles Drive is a separate project with a separate parcel; it is not part of this site plan. That site plan fell under the acreage requirements for City Council approval and was approved by staff. He noted

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that he was also the engineer on that project and he would be happy to work with the neighbors about their concerns.

Mr. Thomas asked if access to the separate project can be provided through the subject property. Mr. Wise said yes and noted there is an easement agreement between the two parcels. Additionally, Mr. Wise confirmed for Mrs. Palmer that the same person owns both parcels.

Mrs. Palmer asked if it would be possible to close the Charles Drive entrance since the property has ingress/egress from Babcock Street. Mr. Wise replied that it is possible since that site hasn't been constructed yet.

Following a brief discussion, Mrs. Corby asked if the Charles Drive entrance can be eliminated. Mr. Wise said yes if it is permitted by emergency services.

Fred Sutton, property owner, stated that he would agree to close the Charles Drive entrance subject to Fire Department approval. He noted that the separate parcel/project is not a speculative project and he will do whatever needs to be done to move the process forward.

The City Manager added that staff will work through any Code requirements.

The Mayor closed the public hearing.

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

Mr. LaRusso asked for a condition regarding closing the entrance to Charles Drive.

The maker/seconded amended the motion to include an additional condition that the driveway connection to Charles Drive would be eliminated.

Following a brief discussion, Mr. Schluckebier said that if an entrance is placed at Charles Drive, it would trigger the change threshold requirements and would have to return to City Council.

The question was called on the motion, as amended. Motion carried unanimously.

17. ORDINANCE NO. 2007-78 (AR-2007-218), ORDINANCE NO. 2007-79 (CPA-2007-08), AND ORDINANCE NO. 2007-80 (Z-2007-1118) JOHN & PATRICA DOWELL: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on a 0.98±-acre parcel, located north of Lake Washington Road, west of Turtle Mound Road, and east of Harlock Road. (Owner/Applicant/Representative - John & Patricia Dowell - 4576 Mustang Road) (P&Z Board - 9/20/07)
- a. Ordinance No. 2007-78/AR-2007-218: (First Reading/Public Hearing) An ordinance providing for annexation of a 0.98±-acre parcel.

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- b. Ordinance No. 2007-79/CPA-2007-08: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential on a 0.98±-acre parcel.
- c. Ordinance No. 2007-80/Z-2007-1118: (First Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate Use) on a 0.98±-acre parcel.

Attorney Gougelman read the ordinances by title and Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval. There were no disclosures from Council and no public comments.

Moved by LaRusso/Meehan for approval of Ordinance No. 2007-78. Motion carried unanimously.

Moved by Meehan/Thomas for approval of Ordinance No. 2007-79. Motion carried unanimously.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-80. Motion carried unanimously.

18. ORDINANCE NO. 2007-81 (AR-2007-219), ORDINANCE NO. 2007-82 (CPA-2007-09), AND ORDINANCE NO. 2007-83 (Z-2007-1119) SEAN & ANN CALLAHAN: Ordinances providing for annexation, a Comprehensive Plan Amendment, and zoning designation on a 0.98±-acre parcel, located north of Lake Washington Road, west of Turtle Mound Road, and east of Harlock Road. (Owner/Applicant/Representative - Sean & Ann Callahan - 4330 Lakemont Road) (P&Z Board - 9/20/07)

- a. Ordinance No. 2007-81/AR-2007-219: (First Reading/Public Hearing) An ordinance providing for annexation of a 0.98±-acre parcel.
- b. Ordinance No. 2007-82/CPA-2007-09: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future Land Use of Suburban Estate Residential on a 0.98±-acre parcel.
- c. Ordinance No. 2007-83/Z-2007-1119: (First Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate Use) on a 0.98±-acre parcel.

The City Attorney read Ordinance Nos. 2007-81, 2007-82, and 2007-83 by title. Mrs. Dittmer reviewed the item. The Planning and Zoning Board voted unanimously to recommend approval. There were no Council disclosures and no public comments.

Moved by LaRusso/Contreras for approval of Ordinance No. 2007-81. Motion carried unanimously.

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Moved by Contreras/LaRusso for approval of Ordinance No. 2007-82. Motion carried unanimously.

Moved by Palmer/Thomas for approval of Ordinance No. 2007-83. Motion carried unanimously.

Recessed: 9:20 p.m.
Reconvened: 9:25 p.m.

19. ORDINANCE NO. 2007-84, LEISURE SERVICES: (First Reading) An ordinance amending Chapter 18, entitled "Leisure Services," as it relates to the designation of park property or property dedicated for public recreational use, providing for a new sub-Section 18-1(c), designating specific park property and property dedicated for public recreational use.

The following is an excerpt from the agenda report: *Although the criteria that apply to selling City-owned park lands are clearly defined in the Code and by Ordinance No. 2007-75, the specific parks to which those criteria would apply are not listed in the City Code nor are they clearly defined in the Comprehensive Plan.*

This ordinance designates City-owned parks and properties that are dedicated for public recreational use.

The significance of having these properties designated is that one of two conditions will apply to any potential sale of the property:

1. *If two acres or larger in size, a proposed sale must be approved by a majority of voters in a referendum.*
2. *If under two acres, a proposed sale must be approved by a supermajority of two-thirds of the members of City Council (five affirmative votes).*

The site of the Melbourne Auditorium is included in this listing. Council will recall that the first step of a market assessment study had been completed. The second step will evaluate the feasibility of expanding the Auditorium on its existing site. Council may wish to consider waiting until that study is completed before including the Auditorium property in the new Section 18-1(c) of the Code.

Attorney Gougelman read the ordinance by its title.

Mrs. Palmer stated that preserving the Wells Park property was her motivation for asking for the ordinance in the beginning.

Moved by Palmer/Corby for approval of the ordinance with direction that the Auditorium/Wells Park property remain in the ordinance. Motion carried unanimously.

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20. ORDINANCE NO. 2007-85, UTILITIES: (First Reading) An ordinance amending Chapter 32, Utilities, Section 32-301, “Definitions; abbreviations” and Section 32-330, “Local Limits” of the City Code of Ordinances with regard to the Wastewater Industrial Pretreatment Program.

The City Attorney read Ordinance No. 2007-85 by title. Mr. Nantz was present and available for questions.

Moved by LaRusso/Contreras for approval of Ordinance No. 2007-85. Motion carried unanimously.

Without objection, Council convened as the Olde Eau Gallie Riverfront Community Redevelopment Agency for the following item:

21. COUNCIL ACTION RE: Approval of a funding request to provide \$3,000 to the Eau Gallie Merchants Association for the purchase of holiday decor.

Moved by LaRusso/Contreras to provide the Eau Gallie Merchants’ Association \$3,000 in CRA funding for the purchase of holiday decor to be installed in Eau Gallie Square. Motion carried unanimously.

Without objection, the City Council convened as the Melbourne Downtown Community Redevelopment Agency for the following item:

22. COUNCIL ACTION RE: Approval of a funding request to provide \$5,500 to Melbourne Main Street for the Fall Art Festival.

Moved by Meehan/Palmer to provide Melbourne Main Street \$5,500 in CRA funding for costs associated with the Fall Art Festival. Motion carried unanimously.

Without objection, the City Council reconvened for the remaining agenda items:

23. COUNCIL ACTION RE: Pay adjustments for non-union employees.

Deputy City Manager Amy Elliott provided an overview. The following is an excerpt from the agenda report: *Funding is provided in the City’s FY 2007-2008 Budget for salary improvements for non-union employees. The following adjustments are proposed to be retroactive to the first paycheck in October:*

- a. *Increase salaries and wages across the board by 2.5%.*
- b. *Provide a step increase (2.5%) in accordance with the City’s Step Pay Plan.*
- c. *Increase the special pay positions of part-time employees so they are consistent with their counterpart full-time positions.*
- d. *Adjust the City Manager and City Attorney salaries consistent with other non-union employees.*

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Mrs. Elliott and Mr. Schluckebier confirmed for Mrs. Corby that the City Manager and City Attorney will receive a 2 ½% step increase and a 2 ½% cost of living increase, consistent with the other non-union employees.

Moved by Contreras/Meehan for approval of non-union salary adjustments of 2.5% across the board increases for regular part-time and full-time employees effective the first paycheck in October 2007, including comparable increases in the special pay positions, step increases in accordance with the step pay plan, and increases to the City Manager and City Attorney salaries consistent with other non-union employees. Motion carried unanimously.

24. COUNCIL DISCUSSION RE: Discussion of a Fire Assessment Fee as Potential Alternative Revenue Source.

Mrs. Elliott reviewed the item. The following is an excerpt from the agenda report: *This discussion item is being placed on the Council agenda in advance of the fall workshop to further evaluate revenue and expenditure options because of the time line required to implement such a fee. The fall budget workshop is tentatively proposed for November 27, 2007 prior to the regular Council meeting.*

A fire assessment fee could be implemented as a non-Ad Valorem assessment to raise revenue specifically to fund fire protection services provided by the General Fund and take pressure off property taxes. It has been estimated that such a fee could generate \$6 to \$10 million. It is specifically our proposal to move forward with this as a General Fund replacement revenue. This means the intent is to provide an offset to property tax revenue if enacted. This would be whether or not voters act to reduce property tax revenues in January 2008.

A fire assessment fee is specifically to provide for the cost of fire protection services and is allocated to parcels based on the benefit to be derived. It is not meant to cover the cost of emergency medical services. Use of such a fee provides a rational application of the cost of this service to the benefiting property, so that each property is assessed its relative fair share.

A cost allocation study performed by an independent consultant would be required to distinguish the fire protection costs and determine how to apportion those costs among the various parcels of property in the City. Typically fee structures are established for residential, commercial, and industrial uses.

To give Council the maximum flexibility to consider such a fee it is recommended that certain initial steps be taken to maintain this revenue source as a viable option for the 2009 fiscal year. It is proposed that if such a fee were implemented that it be billed as a non-Ad Valorem assessment on the property tax bills – similar to the billing of the stormwater assessment fee.

Chapter 197.3632, Florida Statutes governs the levy of non-Ad Valorem assessments on the property tax bills and requires a public hearing and adoption of a resolution stating

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the intent to use the uniform method of collection in the calendar year prior to any collection. This means a public hearing must occur in 2007 to bill the fee in November 2008. Prior to the public hearing a notice of the public hearing to adopt the resolution of intent must appear in the newspaper once a week for four consecutive weeks. The resolution does not in any way obligate the City to levy the fee or even identify a fee. The actual fee structure would be adopted next year by Council after completion of a rate study.

In Brevard County this type of fee is being utilized by Brevard County and by the City of Cocoa. Other communities throughout Florida (large and small) levy a fire assessment fee, including Osceola County, Tallahassee, Tamarac, Ft. Lauderdale, Lake City, Newberry, Polk County, and Walton County. Currently, the cities of Satellite Beach and Titusville are undertaking required research and/or consulting work to proceed with such a fee next year.

Mrs. Corby asked if we had a cost estimate for the consultant study. Mrs. Elliott said it would probably range from \$60,000 - \$90,000. Mrs. Corby said she does not believe that we need to have a consultant prepare a study. Brevard County just went through this process, maybe a year ago. Cocoa also went through this process; however, she doesn't believe they used a consultant. If they had, she commented those figures could be benchmarked. It would save the City the cost of a consultant fee and save time.

Mrs. Elliott asked that Council consider retaining a consultant. It would be important to have an independent recommendation from someone who has the expertise in performing these calculations to ensure that any fee recommended could withstand the scrutiny and would be appropriate.

Mrs. Corby explained that the assessment is based on the properties and the value of the properties; this information would come from the Property Appraiser. She noted that she's not saying we don't need a fire assessment, rather she is saying we don't need to hire a consultant to provide information that we could garner from other sources. Mrs. Corby pointed out that Tamarac has implemented the fire assessment. She asked if our Fire Chief came from Tamarac.

Fire Chief Paul Forsberg confirmed that he came from Tamarac. He informed Council that a consultant is necessary because the fee is based not on property values but on the type of occupancy, size of occupancy, and proportion of the fire type of incidents. The consultant would also determine which part of our budget would be fire related as opposed to medical related.

Mrs. Corby referenced a previous study conducted in the Fire Department where the City paid \$30,000 or \$40,000. Chief Forsberg said that was a different study. Mrs. Corby replied that she understands that but she doesn't think we need to have something done when we can benchmark what is already in place.

The Fire Chief said that the two studies are apples and oranges. With regard to the fire assessment, he commented that is individual to each city and he doesn't know that we

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could benchmark from another city. The assessment will be influenced by our budget, makeup, call volume, types of calls, etc.

Mrs. Corby repeated that studies have been done and she doesn't understand why we can't benchmark.

Mr. Schluckebier replied that there are a variety of methods and matching up the variation, diversity of building types, uses, sizes, and categories presents several options. We reviewed the County's study and were disappointed in the amount of information utilized by the County in framing their process. That could very well be some of the difficulties that they experienced as they switched processes.

Mrs. Corby said she supports the fire assessment, but she is having a hard time. She asked if we have a consultant in mind and if this item will be placed for bid. The City Manager responded that there are some who do this and we will try and get quotes; however, this item tonight is not about hiring a consultant. This is about obtaining flexibility for Council to move forward.

Mrs. Corby said she is trying to attach a potential dollar amount to this. We just completed the budget and gave out raises, and she wants to make sure we are not paying for something we don't necessarily need.

The City Manager said that we would not obtain a consultant prior to a vote by the City Council.

Mrs. Palmer said that public safety in the view of the public is our first responsibility and she believes that most of our residents feel their tax dollars are spent most wisely on public safety. She stated that non ad valorem means "no value added;" additional fees without additional value. The citizens are already paying for the service. She added that she wants to pay for our fire and police departments and fund them more than adequately, but not with a special assessment.

Mr. Thomas agreed and said people have a certain expectation that they are going to get police and fire service with their tax dollars. He is not fond of the idea of creating an additional fee, but he understands that we need to keep our options open and move forward. He will support moving the study forward, but he doesn't like the idea of the assessment fee.

Mayor Goode's motion to approve pursuing a fire assessment fee study and taking the initial steps to hold a public hearing on November 27, 2007 to consider a resolution of intent did not receive a second.

No action taken.

25. COUNCIL ACTION RE: Appointment of two resident members to the General Employees' Pension Plan Board of Trustees.

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Moved by Meehan/Contreras to reappoint John Kerekes and Chris Steele. Motion carried unanimously. (Terms: 10/22/2007 – 10/21/2009)

26. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole, 805 E. Palmetto Avenue, distributed a poem entitled, "A Leaf." She discussed her attendance record at Council meetings and asked Council to think of her as the leaf on a tree.

Vice Mayor LaRusso said that although the City's nominees were not selected for the Florida League of Cities Excellence Awards, he believes they are all winners.

The Vice Mayor noted that at the last meeting Council encountered hostility from West Melbourne, and he was not happy with the way that meeting ended. Mr. LaRusso commended the Mayor for sending a follow-up letter to West Melbourne, which stresses the use of diplomacy.

Council Member Joanne Corby said a constituent spoke to her about the Downtown Melbourne Halloween street party. Mrs. Corby asked if a fee will be charged for people to walk downtown. The person who contacted her was concerned that they would not be able to access another restaurant within the gated area without paying a fee.

City Clerk Cathy Wysor referenced the gated street event policy and confirmed that a person will not have to pay the gate fee if they are accessing an open business within the gated area and not participating in the event. This will be a condition of the permit agreement.

27. ADJOURNMENT

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

The meeting adjourned at 9:55 p.m.



City Clerk – 10/18/2007

Approved by Council: _____