

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 23, 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. Beau DiFrenna, Calvary Chapel of Melbourne, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

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

4. Proclamations and Presentations

Vice Mayor Mark LaRusso read and presented the following proclamations:

“National Magic Week,” October 25-31, 2007, and “National Magic Day,” October 31, 2007; accepted by Joe Massimini, Treasurer, Space Coast Magic Club.

“Abigail Wright Chamberlin Chapter Week,” November 18-24, 2007, accepted by Diana Sheffield, Past Regent, Abigail Wright Chamberlin Chapter, National Society, Daughters of the American Revolution. Ms. Sheffield is also the daughter of organizing regent, Mrs. R. Howard Berg.

Planning and Economic Development Director Cindy Dittmer informed the audience that during Industry Appreciation Week, the Economic Development Commission recognized local manufacturing and high tech companies that have either relocated or expanded in Brevard County. Out of the seven overall winners, the City is pleased to say that six are located in Melbourne. Vice Mayor LaRusso presented Certificates of Recognition “for outstanding economic contribution to our community through investment in capital and labor” to:

Earl Funderburk, Director Quality, Avidyne Corporation, for creating 48 new local jobs. And, Rick Brenner, Executive Director, TyraTech, for creating 26 new local jobs.

5. Approval of Minutes - October 9, 2007 Regular Meeting

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

Mayor Goode announced that the applicant for Item 20 has requested postponement until the November 27, 2007 meeting. Without objection, he stated that Council will postpone this item until November 27.

6. City Manager's Report

City Manager Jack Schluckebier referenced the complaint received by Dirk Hermann, Design Management and Installation, Inc., at a recent Council meeting. The Finance Director has provided a report, and Mr. Hermann's request to have the Contractor Performance Report removed from the file has been granted. This was a new process, not ready to be released, and it should not have occurred. However, City staff did find numerous workmanship and timeliness problems with the contracted work. Dr. Schluckebier concluded by saying he believes the report satisfies this matter.

Council Member Kathy Meehan reminded everyone that the South Melbourne Crime Conference will be held on Saturday, October 27 at Stone Middle School. She thanked County Commissioner Helen Voltz and Melbourne Police Community Relations Council President Yvonne Minus for their hard work and effort in organizing the conference.

Deputy City Manager Howard Ralls provided a status report on the Melbourne/West Melbourne settlement agreement. Mr. Ralls recalled that West Melbourne City Manager David Reynal attended the September 25 City Council meeting and conveyed the message that Melbourne's slow review of the settlement agreement has caused suspicions about our intentions.

Mr. Ralls informed Council that on October 10 the City received a new version of the agreement from West Melbourne with two major problems. The first relates to the Hessee property. Mr. Hessee has met with Melbourne staff and informed us that he has a contract to sell the property; the land use would change. Mr. Hessee had initially proposed a subdivision, and the new buyer plans to build an apartment complex. The City's utility standards for private property are different than they are for subdivisions. The agreement will need to be changed to reflect the new use.

The second issue relates to the Coastal Commerce development. At the July 25 conflict resolution meeting, Mr. Reynal brought up this project and asked for agreement that Melbourne would approve water concurrency and process all related permits for that project. In the new version of the agreement, West Melbourne is proposing to construct a looped water line and connect to an existing master meter. Mr. Ralls displayed West Melbourne's proposal on a map and said that this was not discussed during the conflict resolution meeting. He pointed out that a good part of the waterline runs outside the boundaries of West Melbourne, which is in conflict with the whole idea of the original water agreement that they would only sell water within their boundaries. Additionally, it appears as if they are proposing a new master meter, which has never been discussed.

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Mr. Ralls summarized by saying West Melbourne complained about our review and then submitted a new document containing complications. He stressed that it will take time to resolve these new issues.

The City Manager added that there are some confounding issues that he would like to bring to Council's attention. It continues to get more complex rather than simplified. Mr. Schluckebier informed Council that a written report on these issues and concerns will be provided.

7. Public Comments

Vice Mayor Mark LaRusso referenced Agenda Item #25, which indicates that a budget workshop meeting is proposed for November 27, in advance of a regular meeting. He said that because of the challenges we face going into the next year, he would like to find a separate meeting date for the workshop, rather than allotting one hour prior to the start of a regular meeting.

Mr. Schluckebier replied that staff was probably going to be pressed to meet that date. He added that Council would be well advised to take a few hours on that topic. It might be advisable to move that meeting to January so staff can look at options to explore. He concluded by saying that staff committed to conducting this meeting in the fall; therefore, he would like for Council to indicate that it would be okay to shift the meeting to January.

By consensus, Council agreed. In response to Council Member Joanne Corby, the City Manager said that we took care of the budget for the short-term; however, staff promised long-term opportunities for increasing revenues or decreasing expenditures. Mayor Goode asked that staff provide suggested meeting dates in January for this meeting.

Mayor Goode read the Council policy on public comments (comments are limited to three minutes per person with a total of 15 minutes allotted for the item). The Mayor informed Council that based on the number of people who have signed up to speak, he is going to impose a two-minute rule.

Vicki Impoco, Carissa Drive, Satellite Beach, representing Brevard Patriots for Peace, distributed a letter from Congresswoman Betty McCollum and an article, entitled "TV Evangelist John Hagee Wants War With Iran, and He Wants It Now!", written by Bill Barnwell. Ms. Impoco reported that Pastor John Hagee, under the guise of honoring Israel, will speak in November at the Melbourne Auditorium. She stated that Pastor Hagee in reality does not honor Israel, but uses this platform to preach hatred towards Arabs and Muslims.

Michael Egerton, Pace Drive, Palm Bay, stated that Pastor Hagee is scheduled to speak at the Melbourne Auditorium on November 5 and, through his web sites and other forms of advertisements, he is using the phrase, "Melbourne Presents." Mr. Egerton said that he feels this is deceitful and conveys the message that Melbourne is advocating what Pastor Hagee is doing. He asked Council to look into this and request that Pastor Hagee remove this phrase from his web sites and advertisements.

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The City Manager informed Council that this was brought to the attention of our Public Information Officer yesterday. Staff contacted the organization and made it clear they were not authorized to use that reference and asked that it be removed. The reference to “Melbourne Presents” was removed yesterday.

Council Member Cheryl Palmer asked if we draw a distinction between using “Melbourne” and the term “City of Melbourne.” Mr. Schluckebier said that legally and technically there may be a distinction; however, the term was used to demonstrate that the government was sanctioning this event. Mrs. Palmer replied that Mr. Hagee’s organization may wish to withdraw that name from their advertisements, but they would have a good case for using the name “Melbourne” since they are coming to Melbourne. She added that she understands the people who find this a political issue might not like that, but we need to be careful with everyone’s freedom of speech.

Seeta Durjan Begui, Loggerhead Island Drive, Satellite Beach, said that she thinks it is atrocious for anyone to use the Melbourne Auditorium to promote hate and war. She said that on television she heard Pastor John Hagee lambasting Iran, Muslims and the people of the Middle East. She is appalled that he was invited here under the cloak of Christianity to promote his evening to honor Israel.

Jo Ann Clark, 4048 Green Oak Drive, referenced Council’s approval of the Pine Creek Meadows Apartments site plan at the last Council meeting. She informed Council that there is a lot of confusion with this project. The residents have found some interesting issues: there is a new developer, the amount of property being used is in question, and the number of units being proposed is beyond their wildest imagination. Ms. Clark said the residents were hoping Council would conduct another hearing because no one in South Oaks Subdivision was notified that this was going to happen. The residents would like to appear before Council and express their wishes and concerns.

Council Member John Thomas asked the City Attorney what the process would be if he wanted to bring that item up to be reconsidered.

Attorney Gougelman said that there is some case law that does allow for an approval to be reconsidered within 30 days of the approval date. That case law is somewhat older and he is aware of only one or two instances in the state where a jurisdiction tried to exercise that. One of the cases involves the Town of Melbourne Beach. Mr. Gougelman elaborated on that case and stated that the City Council would probably get a pretty quick response from the property owner if this item were reconsidered.

Mrs. Corby asked if during the last phase of this development if proper public hearings were conducted and residents notified. The City Manager said it is his understanding that the zoning on that property was established some time ago. The item on the last agenda did not involve a zoning change; it was simply a site plan.

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Mrs. Dittmer confirmed that the City Code does not require notifications for site plans. Mayor Goode added that most jurisdictions in Brevard County do not hold a public hearing on a site plan. Melbourne does that as a courtesy.

Mrs. Corby pointed out that this group does not feel they have been heard. She asked if there is something the City can do to bring the plan back and allow an opportunity for the residents to be heard.

Attorney Gougelman said most people are under the impression that when approval is given, that is the end of it. Case law supports the concept of allowing a council to reconsider action with regard to a development permit within 30 days of approval being given. He added that it is somewhat of a stretch and the Town of Melbourne Beach is in a lawsuit over this issue.

Mrs. Corby said she didn't get the impression from this developer that he would want to develop a property that the nearby residents wouldn't be pleased with. She got the impression that he wanted to be accommodating and develop a project that would be compatible with the area.

Moved by Corby/LaRusso to hear what the residents have to say. (This motion was later withdrawn.)

Mayor Goode asked the City Attorney to outline the process. Attorney Gougelman said clearly we will have to notify the applicant. But, if Council is taking up a motion to reconsider and withdraw approval at this meeting, then we will have to notify the applicant and set a date for a future hearing.

Mayor Goode said he does not believe that the motion included direction to "deny approval." Mrs. Corby agreed and said she would just like to conduct a public hearing.

Attorney Gougelman said if the item is being reconsidered, Council is withdrawing approval.

Discussion followed regarding the developer's willingness to be accommodating, the process and the case law regarding reconsideration of an approved item.

Council Member Richard Contreras said he can't support the motion. He pointed out that if there is a significant change to the site plan, it would need to return to Council; therefore, his suggestion is for the residents to discuss this issue with Jake Wise, the developer. If Mr. Wise finds that he wants to alter the plan and the alteration is significant, it would return to Council for another public hearing.

Mr. Thomas said he feels for the residents; however, he does not want to open the City up to a lawsuit. And, he doesn't want to give the impression that the City Council goes back on its word.

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Mrs. Palmer pointed out that Mrs. Poole would like to speak on this item. The Mayor replied that the number of speakers for public comments outnumbers the time available for this item.

Moved by Palmer/Thomas to amend Council's rule on public comments and allow Mrs. Poole two minutes to comment on this issue. Motion carried unanimously.

Mr. LaRusso asked if this motion could be made while the main motion was on the floor. Attorney Gougelman said that the motion to allow Mrs. Poole to speak on this issue had a higher rank. A brief discussion followed on the process.

Pat Poole, 805 East Palmetto Avenue, reported that the Pine Creek Meadows Apartments is part of a large development that has been going on for years. This parcel has a new developer and new owner. People in the area did not know about this item and they have a right to let Council know about their concerns. She added that it is wrong to allow this property to take density that wasn't used from other parcels, especially property with a new owner from Miami.

Mayor Goode said that the motion is for adoption of Mrs. Corby's motion to have staff meet and come up with a plan to have a public hearing.

Mrs. Corby confirmed that is correct. Attorney Gougelman said unless he is misunderstanding, it is also to reconsider and revoke the approval of the site plan so that Council could go forward with a new public hearing. Mayor Goode said that Mrs. Corby's motion does not include that.

Mrs. Corby asked if it is required to remove approval in order to hold a public hearing. Attorney Gougelman said that Council can conduct a public hearing on any item at any time. But, if a hearing is held and the people say they don't want this plan/development, it will be too late for Council to do anything.

Mrs. Corby said this would allow them the opportunity to speak. If that opportunity is provided within the 30-day time period, Council is still within the time to deny the project. Attorney Gougelman disagreed and said that revoking approval has to be done within 30 days.

Discussion followed regarding meeting dates and timeframes.

Mayor Goode asked Mrs. Corby to restate her motion. Mrs. Corby withdrew her motion.

The Vice Mayor did not agree to withdraw his motion. He noted that he would like to move forward, although not with revoking approval. Therefore, he will be the maker of the motion. He asked for assistance with the procedure. He doesn't want a lawsuit; however, he would like to talk to the developer. He noted that he has been pushing for lower density in specific areas.

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Attorney Gougelman said there are two approaches: Option A would be to revoke the approval, direct staff to contact the developer, set a public hearing and give notice. That does open the door to the potential of objections and a lawsuit from the developer. There is case law to support that, but it is somewhat thin.

Option B would be to hold a public hearing, advise the developer that his site plan stands but we would like to hold a special public hearing. And, if anything comes out of that, to request the developer consider changes to his plan. If he rejects that decision, Council is stuck.

Mayor Goode pointed out that the Vice Mayor doesn't want to withdraw his motion. Attorney Gougelman said if he does not withdraw his second, then the original motion – which is to revoke approval – stands for a vote. However, the Vice Mayor indicated that he was trying to figure out which way to go.

Mayor Goode said it is his understanding under parliamentary procedure that the motion is still on the floor. Attorney Gougelman agreed. Mayor Goode said that Council needs to dispose of that before proceeding. At this point, Vice Mayor LaRusso removed his second from the motion.

Mrs. Corby said the description of Option B is what she had in mind when she made her motion; however, she was told she couldn't do that. That is why she withdrew the motion.

Attorney Gougelman said he may have misunderstood. His understanding was that she wanted to be able to do something about the site plan. If the public hearing was held and Council wanted to be able to kill the site plan, Option B would not provide for that. A public hearing could be held and, if the developer attends, Council could ask him to consider making changes to the site plan.

Mr. LaRusso said he will stick with Option B and he will be proactive with the developer to get this item back on the table.

Moved by LaRusso/Thomas to go with Option B (hold a public hearing, advise the developer that his site plan stands but we would like to hold a special public hearing, and if anything comes out of that, to request the developer consider changes to his plan).

Discussion followed about the timing of the hearing and whether a special meeting could be held for that purpose.

Mrs. Palmer stated that she is all for the public having a right to speak, but procedurally this is very messy. The purpose of a Planned Unit Development is to allow lower density on one part of a development and allow higher density on the remaining property. She said that, although that may not be what she likes, it is what the City approved for this PUD. This was the final phase on a planned development, the plan has gone through all the legal procedures, and Council approved the site plan. She concluded by saying that she can't support the motion because legally and procedurally it is very shaky.

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Mr. Contreras said that the site plan has been approved and the developer has gone through all the legal requirements that are in City Code. He asked if he heard correctly that the developer could “choose” whether or not to attend the public hearing.

Attorney Gougelman confirmed that he can choose whether or not to attend. He has met every threshold requirement that the City Code requires. At this point, the developer is on to the next hurdle, working with engineering to finalize construction plans, etc.

Mrs. Meehan said she won't support the motion. The item has gone through site plan review. She added that she feels the City of Melbourne will be in a lawsuit with this action.

The question was called. The roll call vote was:

Aye: Thomas, Corby and LaRusso

Nay: Contreras, Meehan, Palmer and Goode

Motion failed.

Mayor Goode continued with public comments and called the next speaker, Margaret Woodhouse. From the audience, Ms. Woodhouse stated that she has nothing to say.

Eric Ellebracht, 1948 Tyler Avenue, pointed out that the flights from Germany will not start in November as planned. He said that this happened to the Airport before with flights from Manchester, England. Mr. Ellebracht stated that the next time the Airport Authority spends \$500,000, they should at least park an airplane on the apron to show viability. He recommended that the Airport concentrate on providing flights to different destinations for our residents rather than trying to attract people to this area.

UNFINISHED BUSINESS

8. 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: (Second Reading/Public Hearing) An ordinance providing for annexation of a 0.98±-acre parcel. (First Reading - 10/09/07)
 - b. Ordinance No. 2007-79/CPA-2007-08: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment designating a Future

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Land Use of Suburban Estate Residential on a 0.98±-acre parcel. (First Reading - 10/09/07)

- c. Ordinance No. 2007-80/Z-2007-1118: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate Use) on a 0.98±-acre parcel. (First Reading - 10/09/07)

Attorney Gougelman read the ordinances by title. There were no disclosures from Council and no public comments.

Moved by Contreras/LaRusso for approval of Ordinance No. 2007-78.

Mrs. Corby said she has two infrastructure questions, which relate to this agenda item and the next agenda item.

She asked if the auto-aid agreement with the County to provide fire protection services in this area will continue. The City Manager replied yes.

Mrs. Corby said that the City and the County have different regulations relating to installation of fire hydrants. She asked if we have plans in place to provide fire hydrants as this area starts to grow. Mr. Schluckebier replied that they are installed in accordance with City standards as we install new waterlines in the newly annexed areas. He clarified that the two items on this agenda provide for an extension of single lots within those subdivisions.

The question was called. The roll call vote was:

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

Motion carried unanimously.

Moved by LaRusso/Palmer for approval of Ordinance No. 2007-79. The roll call vote was:

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

Motion carried unanimously.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-80. The roll call vote was:

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

Motion carried unanimously.

9. 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

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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: (Second Reading/Public Hearing) An ordinance providing for annexation of a 0.98±-acre parcel. (First Reading - 10/09/07)
- b. Ordinance No. 2007-82/CPA-2007-09: (Second 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. (First Reading - 10/09/07)
- c. Ordinance No. 2007-83/Z-2007-1119: (Second Reading/Public Hearing) An ordinance providing for a zoning designation of REU (Rural Estate Use) on a 0.98±-acre parcel. (First Reading - 10/09/07)

Attorney Gougelman read the ordinances by title. There were no public comments and no disclosures from Council.

Moved by Meehan/Contreras for approval of Ordinance No. 2007-81. The roll call vote was:

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

Motion carried unanimously.

Moved by Contreras/LaRusso for approval of Ordinance No. 2007-82. The roll call vote was:

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

Motion carried unanimously.

Moved by Meehan/Thomas for approval of Ordinance No. 2007-83. The roll call vote was:

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

Motion carried unanimously.

10. ORDINANCE NO. 2007-84, LEISURE SERVICES: (Second Reading/Public Hearing) 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 subsection 18-1(c), designating specific park property and property dedicated for public recreational use. (First Reading - 10/09/07)

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Attorney Gougelman read Ordinance No. 2007-84 by title. City Clerk Cathy Wysor confirmed for Mrs. Palmer that the Wells Park (and Auditorium) property remain in and are covered by the ordinance.

Mayor Goode opened the public hearing. There were no comments.

Moved by Palmer/Thomas for approval of Ordinance No. 2007-84. The roll call vote was:

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

Motion carried unanimously.

11. ORDINANCE NO. 2007-85, UTILITIES: (Second Reading/Public Hearing) 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. (First Reading - 10/09/07)

Attorney Gougelman read Ordinance No. 2007-85 by title. Mayor Goode opened the public hearing.

Ayn Marie Samuelson, 494 Sandpiper Drive, Satellite Beach, addressed Council regarding Ordinance No. 2007-58 adopted July 24, 2007.

Ms. Samuelson said this issue arose from a utility bill that was billed to her, but was the responsibility of her tenant. After speaking with utilities staff, she learned that she must pay basic water and sewer charges on any of her rental property when it is vacant – even if the meter has been locked or pulled. The basic charges are mandatory on an account that she did not set up; the City set the account up. And, if she fails to pay the basic charges, a lien will be filed against the property.

Ms. Samuelson asked why property owners weren't notified about this ordinance. She added that some owners are being billed in arrears for water and sewer prior to the October 1, 2007 implementation date of the ordinance.

Continuing, Ms. Samuelson said that the account in question shows that the tenants owe \$563 in back charges. She asked why the City would allow the bill to grow to that amount. Regarding the 5% water and sewer rate increases, she asked if they relate to capital and, if so, if the increases will be retired after the infrastructure is built and the expenses are paid.

She concluded by asking the City Council to review the ordinance, its implementation, and unintended consequences.

Mr. Schluckebier said that about three years ago the City Council established a requirement that all utility accounts stay in good standing with a commensurate requirement to continue supporting the system. Previous to that, there were hundreds of

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properties that would simply turn their utilities off and on at their convenience. The most recent ordinance revises and refines that process to be less problematic.

Continuing, Mr. Schluckebier said that Ms. Samuelson was improperly billed for a back bill of her tenant. The Finance Director has advised her that will be corrected. He added that he does not know if a lien results from non-payment.

The City Manager explained that the underlying issue being complained of is whether or not you wish those who receive a benefit from utilities to be able to turn those utilities off and quit paying for the system's recurring fixed expenses. If a customer wishes to discontinue paying for the recurring expenses – the fixed part of the utility bill – they have the opportunity to disconnect from the system and return in the future and repurchase capacity in the system.

The Mayor asked Ms. Samuelson if her problem has been satisfied. Ms. Samuelson said that particular issue has been resolved; however, she doesn't have the option to disconnect from the basic water and sewer charges.

Following a brief discussion, Ms. Samuelson asked for an explanation about why a bill was allowed to reach \$563. The City Manager replied that staff will provide a written answer to that question; however, that was an error. It was a back billing that should not have occurred.

Mrs. Corby asked if the City is able to set up an account for a property owner without their knowledge. Mr. Schluckebier replied that he hesitates to answer that directly; therefore, he will have the Finance Director provide a response.

Moved by Palmer/Meehan for approval of Ordinance No. 2007-85.

Mrs. Palmer pointed out that this ordinance has nothing to do with Ms. Samuelson's comments.

The question was called. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract award for renovation of the Carver Park Recreation Center, Project No. 00307, L.A. Construction Services, Inc., Merritt Island, FL - \$216,770; a loan of \$147,652 from the General Fund to establish this project budget; and transfers of \$5,000 from Carver Park Improvements (Project No. 06204), \$2,733 from SCCIL Handicap Access (Project No. 05105), \$5,932 from BTW Youth Initiative, \$82 from Summer Camp Scholarships, \$125 from PAL, and \$5,477 from Links of Hope to supplement this project budget.

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City Engineer Jenni Lamb provided an overview.

Moved by LaRusso/Thomas for approval of the construction contract with L.A. Construction Services, Inc. in the amount of \$216,770 for the renovation of Carver Recreation Center; a loan of \$147,652 from the General Fund to supplement this project budget; and transfers of \$5,000 from Carver Park Improvements (Project No. 06204), \$2,733 from SCCIL Handicap Access (Project No. 05105), \$5,932 from BTW Youth Initiative, \$82 from Summer Camp Scholarships, \$125 from PAL, and \$5,477 from Links of Hope to supplement this project budget. Motion carried unanimously.

13. COUNCIL ACTION RE: Contract award for the demolition of the North Water Treatment Facility, Project No. 35105, Sunrise Systems of Brevard, Inc., Cocoa, FL - \$179,506 and transfer of \$89,153 from Water & Sewer Miscellaneous Capital Improvements to supplement this project budget.

Ms. Lamb was available for questions.

Vice Mayor LaRusso pointed out that the City is spending over \$179,000 to demolish a facility that has been inactive for 18 years. He asked if there are plans for the site. Ms. Lamb replied that there are no current plans; however, this project has been on the books for several years. Money is available in the budget and she chose to move forward. Mr. LaRusso asked if this could be done in phases over the next few years. Ms. Lamb said it would not make sense to phase this project. The structures could remain; however, the project has been pushed out and it needs to be done.

Mr. Contreras asked if there are any risks, other than future costs being higher. Ms. Lamb replied none that she is aware of. The amount originally budgeted for this project is considerably less. Ten bids were received and a decent price was obtained in the market. Mr. Contreras pointed out that we will pay more for this in the long run if we do not proceed.

Moved by Contreras/Meehan for approval of the construction contract with Sunrise Systems of Brevard, Inc. in the amount of \$179,506 for the North Water Treatment Facility Demolition and transfer of \$89,153 from Water & Sewer Capital Improvement, Miscellaneous Project No. 30099, to supplement this project budget. Motion carried. Mrs. Palmer voted nay.

14. COUNCIL ACTION RE: Supplement No. F001 to the Continuing Consultant's Contract for Professional Services to survey, design, permit, prepare bid documents, and perform construction administration for the South End Reuse Expansion, Phase 1 along Leonard Weaver Boulevard between Line Street and Florida Avenue, Project No. 31208, Frazier Engineering, Inc., Melbourne, FL - \$72,000.

Ms. Lamb reviewed the item.

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Mrs. Palmer asked if we have any projections on the dollars the City will get back from the Mayfair project for reuse water.

Mr. Schluckebier said Mayfair is estimated to be 1,200 – 1,300 residential units at build-out. Currently the fee is based on acreage, although the competitive market is moving toward the idea of metering reuse. Staff may return with that kind of proposal in the next 12 months, long before Mayfair actually happens. To answer the question directly, the current flat fee is five dollars per month, which would equate to \$7,000 - \$8,000 per month with 1,200 homes.

Mrs. Lamb pointed out that this project will not serve Mayfair exclusively; it is part of a master plan to expand the reuse system.

Moved by Palmer/LaRusso for approval of Supplement No. F001 to Frazier Engineering, Inc. for the South End Reuse Expansion, Phase 1, Project No. 31208 in the amount of \$72,000.

Mrs. Corby asked if the \$72,000 will come from the blanket purchase of one million dollars that Council approved for Frazier Engineering a couple of meetings ago. Mrs. Lamb clarified that previously Council approved awarding projects with a construction value of up to one million dollars to Frazier. This is the very first supplement of the new contract.

The question was called. Motion carried unanimously.

15. COUNCIL ACTION RE: Supplement No. F002 to the Continuing Consultant's Contract for Professional Services to design and aid in the implementation of recommended improvements for the Lake Washington Water Plant post treatment feed equipment for water quality, Project No. 30808, Frazier Engineering, Inc., Melbourne, FL - \$72,500.

Mrs. Lamb briefed the City Council.

Mrs. Corby commended staff for the Public Works Utilities Connection newsletter and said it is very helpful. Regarding the list of projects in the newsletter, she suggested that rather than using all bullets, staff use some other means to differentiate what phase a project is under.

Moved by Thomas/LaRusso for approval of Supplement No. F002 to Frazier Engineering, Inc. for Lake Washington Water Plant Post Treatment Feed Equipment for Water Quality, Project No. 30808 in the amount of \$72,500. Motion carried unanimously.

16. COUNCIL ACTION RE: Change Order No. 1 to the contract for Backup Production Well and Pump Station 4, Project No. 31003, A. C. Schultes of Florida, Inc., Gibsonton, FL - \$92,840.43 and transfer of \$34,593 from Water & Sewer Capital Improvements to supplement this project budget.

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Mrs. Lamb reviewed the agenda report.

Mr. LaRusso asked that future change orders contain additional background information, including an explanation of the original contract amount, whether the consultants were involved in the change order, and where the contract fell out of line to necessitate a change order. With regard to this item, he pointed out that the additional piping necessary to complete the connection should have been recommended by our consultant.

Mrs. Lamb replied that the original contract amount for this item was \$1,262,500; therefore, the change order is less than one percent of the total. She added that the consultants have been greatly involved with this project. The well is not producing the amount needed and we will try to change that using the acidization process. Regarding siting of the well, the permit we received from the Florida Department of Environmental Protection shifted its location; it wasn't the result of an error in engineering. The well had to be shifted to meet FDEP's criteria.

Vice Mayor LaRusso thanked Mrs. Lamb for the additional information and asked that future change orders contain background information.

Mr. Contreras commented that he has learned through the years that when dealing with projects like this, plans don't always reflect what is under the ground or certain environmental conditions. Mrs. Lamb agreed and said that is especially true when dealing with wells.

Mrs. Palmer referenced the agenda material, which indicates some of the cement that was poured migrated. She asked if this was a mistake and how much of this cost is to rectify that mistake.

Mrs. Lamb said there was a combination of the excess cement poured and the conditions underground. Staff worked with the consultant and the contractor on this issue. The contractor will pay half the price to perform the acidization. The City's portion of the acidization is \$52,340.43.

In response to Mrs. Palmer, Mrs. Lamb said that the acidization will attack the cement and the limestone in the immediate area of the well.

Mrs. Palmer said she doesn't understand why we are paying half if it is their mistake. Mrs. Lamb replied that the City cannot prove that the well would have flowed without the excess concrete. This is a multi-part problem that we found once we started flowing and testing the well. The best we could determine is that the costs should be shared.

Moved by LaRusso/Contreras for approval of Change Order #1 in amount of \$92,840.43 to A.C. Schultes of Florida, Inc. for the Backup Production Well and Pump Station No. 4 and a budget transfer of \$34,593 from Water & Sewer Capital Improvements to supplement this project budget. Motion carried. Mrs. Palmer voted nay.

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17. CONSENT AGENDA:

Mayor Goode reported that Council Member John Thomas has removed Item “g” from the consent agenda.

Moved by Contreras/Meehan for approval of the consent agenda, Items “a” through “f.”
Motion carried unanimously.

- a. Approval of an Interlocal Agreement between the City of Melbourne and Brevard County for the Pineda Causeway Waterline Replacement, Project No. 33605 – estimated cost of \$750,000.
- b. Approval of the First Amendment to the 2007 Interim Agreement Regarding the Sale and Purchase of Water between the City of Melbourne and the City of West Melbourne; providing for a new master meter interconnect to the Melbourne water system at U.S. Highway 192 and Hollywood Boulevard that will serve the Hollywood Water Line to be constructed by the City of West Melbourne.
- c. Contract award for the purchase of sanitary sewer manhole rehabilitation, Chaz Equipment Company, Wellington, FL - \$100,000.
- d. Contract award for air conditioning maintenance/repair, Able Air, Inc., Melbourne, FL - \$80,696.
- e. Approval of a blanket purchase order for annual legal and display advertisements, Cape Publications, Inc., Melbourne, FL - \$50,000.
- f. Approval for the City of Melbourne to participate with the Florida Highway Patrol and the Florida Department of Transportation in joining the Brevard County Open Roads Policy to reduce the impact of incidents on Florida roadways and authorization for the City Manager to sign the policy.

Note: See next agenda item for action on Item “g.”

- g. Agreement between the City of Melbourne and the School Board of Brevard County for five School Resource Officers at seven schools for the remaining school year, November 1, 2007 through June 8, 2008, at a maximum reimbursement of \$146,650.99.

18. ITEMS REMOVED FROM THE CONSENT AGENDA

- g. Agreement between the City of Melbourne and the School Board of Brevard County for five School Resource Officers at seven schools for the remaining school year, November 1, 2007 through June 8, 2008, at a maximum reimbursement of \$146,650.99.

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Mayor Goode announced that people have signed up to speak on this item; however, Council does not normally take public input on the consent agenda.

Mr. Thomas said he pulled this item because he has serious concerns about reducing the number of school resource officers, cutting the program and taking some of the officers out of the schools. He is aware that there are people in the audience with similar concerns.

Moved by Thomas/Palmer to allow each speaker two minutes. Motion carried. Mayor Goode voted nay.

Council agreed to have the Police Chief provide an overview. The Mayor pointed out that people are continuing to sign up to speak. He questioned taking sign-in sheets in the middle of an item. By consensus, Council agreed to allow people to continue signing in to speak. Mayor Goode said that if this is going to turn into a long public hearing he's going to take a break.

Recessed: 8:34 p.m.
Reconvened: 8:47 p.m.

Melbourne Police Chief Don Carey said that in light of a 20%-plus increase in crime in the last two years, staff was looking for ways to increase our first responders. During negotiations for the school resource officers, all the police chiefs and the sheriff had a unified proposal. The School Board superintendent agreed to increase the contribution rate from 50% to 55%. We continued addressing our concerns that officers assigned to schools were barely available to the City as police officers, other than in their capacity as school resource officers. In-service training, vacations, etc. were all done during the summer when they were available to the City. In essence, this made them not available to the City.

Although we are still in the negotiation phase as to the amount of money, we do have a tentative agreement to increase the training, etc. during school time so officers will be prepared to work the street during the summer.

The Chief stated that the proposal he made to the City Manager is that we take the seven schools served now by a total of six full time and two part time school resource officers and change that to five full time officers. Staff reviewed police activity for the last year in the schools we serve. West Shore Junior/Senior High has the lowest in school activity with virtually no arrests and very few citations. Second is the adult education center located at the Florida Market Place, across the street from Melbourne High School. The recommendation is to utilize five full time resource officers; provide service to the adult education center during the day by the officer assigned to Melbourne High; serve the adult education facility during the evening by the district car; and combine the officer from Stone Middle School with West Shore.

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Chief Carey stated that he feels strongly that this would allow us to provide nearly the same level of service while providing two more officers for first responders to help in the fight against crime.

Mr. Contreras said that the Chief mentioned negotiations are still underway. He asked the Chief to elaborate.

Chief Carey replied that the contract is worded specifically as “not to exceed”, which is the absolute maximum that could result. The formula details have not been agreed upon. The school security chief submitted paperwork showing that they only want to use salary, workers’ compensation, social security, and health insurance as benefits. However, the City has a tremendous amount of pension payments along with other certain fringe benefits. In theory, the School Board agreed that five officers would suffice. They are comfortable with that; however, we haven’t been able to agree on a monetary amount.

The Chief added that because the School Board provided the contracts to the City so late, we’ve entered into two, 30-day contracts. We are now trying to get a contract for the remainder of the school year to provide these services.

Mr. Contreras said that during the review of the 2007-2008 budget, there was never any mention of cutting school resource officers. However, he recalls that the edict from Council through the City Manager to Department Heads was to look at opportunities for cuts. He asked if this is part of the edict from City Council. Chief Carey replied yes and noted that he was looking for efficiency and savings.

Regarding the School Board being in agreement with five officers, Chief Carey clarified that the school security chief indicated that she and Dr. DiPatri are comfortable with that. This item is being taken to the School Board this evening.

Mr. Contreras asked if anyone in the audience knows how the School Board acted on this item; he would like to know the results before proceeding.

From the audience (Jesus Martinez) identified himself as the Vice President of Brevard Association of School Resource Officers stated that he received word by telephone that the School Board turned down the agreement.

Mayor Goode asked if anyone in the audience was actually at the meeting; he’s looking for expert testimony. There was no response.

Mr. Contreras said if the School Board turned down this contract, relatively speaking it makes this discussion a moot point. Mrs. Palmer stated that Council needs to know what the public has to say before proceeding with further negotiations.

Mayor Goode asked the man from the audience to come forward and give a brief description of what he was told over the phone about the School Board’s action.

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Jesus Martinez said he received a phone call about three minutes ago from an assistant principal at the School Board meeting who said the Board unanimously voted to send this item back to the table and have Melbourne renegotiate. The Board is not in agreement with five officers for six schools and the adult education center.

Mr. Contreras pointed out that this is a contract negotiated between two government entities; it's not a one-way street. Mrs. Corby agreed. Continuing, Mr. Contreras said he has no problem hearing from people, but this item is moot at this point.

Mr. LaRusso pointed out that we sent this agreement on with the concern that we were paying 50%. Dr. DiPatri returned with an offer of 55%. We are in negotiations for the money spent from the taxpayers, not for the safety of the children. He asked what the School Board's recommendation was in unanimously sending this contract back.

Mr. Martinez replied that the only word he received was the School Board disagreed with the number of officers.

Mr. LaRusso said we pushed this back because the City can't absorb all the cost. The City needs the School Board's help, not a reduction in staff.

In response to Mr. Contreras, the Mayor and the City Manager confirmed that Mr. Martinez is Officer Martinez with the Melbourne Police Department.

Mayor Goode continued with public comments.

Jennifer Cope, 965 East Whitmire Drive, President of the West Shore Junior/Senior High School PTA, thanked the City for funding a portion of the salary and benefits for the school resource officers. She recommended that this item be tabled for further consideration because it would result in West Shore being the only high school in the County that has to share a resource officer.

Ms. Cope reported that West Shore has an exemplary record and this can only be attributed to the teamwork between the school administration, teachers, staff, parents and Officer Martinez - who proactively patrols the school and surrounding area. Ms. Cope pointed out that West Shore is open to intrusion by surrounding properties.

She concluded by saying that West Shore is a model school because of Officer Martinez's proactive approach to keeping order at the school. The students have an incredible amount of respect for him, which can only be achieved with daily interaction. If he has to be shared, it is highly likely that his time at West Shore will be relegated to simple drive bys, as Stone Middle School will likely take most of his time.

Mr. Contreras referenced the amount of e-mail traffic on this item and the misinformation in the e-mails. He noted that one message contained several paragraphs from Officer Martinez full of misinformation. A brief discussion followed.

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Vice Mayor LaRusso said that his wife is a School Board employee. Regarding West Shore, the understanding some have from the outside looking in is that it is a school of choice. The lack of incidents is attributed to the involvement of the students and the parents. He added that Stone needs its own officer. However, from his perspective, West Shore is self-contained; a student has to be at a certain level to gain entry to the school. Therefore, the question is why can't an officer be shared.

Ms. Cope said that a lot of that is due to the wonderful rapport and respect that the students have for the current resource officer.

Mrs. Meehan said that her son graduated from West Shore and she often questioned the need for a police officer at the school; there was never an incident. She feels that his services would be better served in other schools.

Mayor Goode asked how much money the City has in Contingency. Mrs. Palmer pointed out that we are in the middle of contract negotiations. Several other Council Members chimed in and agreed. Mr. Schluckebier said that the General Fund began this year with about \$200,000.

The Mayor said that the Chief informed him that these school resource officers are averaging about \$50,000 a piece. Before proceeding, he would like to know how much we pay for each of the current resource officers, including pay, benefits and retirement. This will give Council a better picture of what it needs to do.

Moved by Contreras/Corby to authorize the City Manager to enter into another 30-day contract, through November 30, to allow time for contract negotiations with the School Board to continue.

Mrs. Corby said that some type of panic has been started with this item. She's not sure of the source, although that does not matter. Mrs. Corby pointed out that the City has to be fiscally responsible; however, the School Board is equally responsible to provide the same initiatives. Financially, the School Board has fared a lot better than the cities during property tax reform mandated by the Florida Legislature.

Continuing, she said she would be interested in hearing from Dr. DiPatri why the School Board did not approve this and what they feel they can bring to the table to ensure all our schools are safe. It's important that the burden of financial responsibility does not just lie on all the cities. Mrs. Corby concluded by saying she hopes the School Board would take as much care and caution towards this issue as the City of Melbourne.

Mrs. Meehan asked for a report on the crime statistics and the number of incidents from the schools.

Mr. Thomas said that prevention cannot be measured. Whether it's a school with a 3.8 GPA or a 1.8 GPA, you don't know the importance of having an officer on campus. The work they do can't be measured in arrest reports and calls. Their work is preventive and the relationships they establish can't be put into words.

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Mr. Thomas advised Council that a commander is scheduled to retire in December from the Police Department. Mr. Thomas recommended that if the commander retires, his pay be used to fund two officers, with one or two going back to the school resource officer program.

Vice Mayor LaRusso pointed out that this is tax reform gone bad and this is just the beginning of the results. He supports tax reform; however, there is a right way and a wrong way.

The question was called. Motion carried unanimously.

Moved by Palmer/Meehan to direct the City's negotiating team to strongly suggest that the School Board step forward and shoulder more of the financial burden for the school resource officers.

Mrs. Palmer said she would like the School Board to step up to the plate if they do not want school resource officers shared. She added that she does not want to dip into Contingency for officers – a recurring expense.

The question was called. Motion carried unanimously.

Mayor Goode called the remaining people who signed up to speak in case they had a burning desire to address Council further on this issue. They all declined the opportunity to speak.

Recessed: 9:30 p.m.

Reconvened: 9:36 p.m.

19. FINAL PLAT APPROVAL (SD-2003-07) CALICO HEIGHTS SUBDIVISION: (Public Hearing) A request for final plat approval to allow development of a 52-lot subdivision on 12.99 acres zoned R-1B (Single-Family Low Density Residential), located on the east side of Croton Road, south of Post Road, and north of the Eastwood Park Subdivision. (Owner - TFM Enterprises, Inc.) (Applicant - Tim McWilliams) (Representative - Jake T. Wise, P.E.) (P&Z Board - 10/04/07)

Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval of the final plat, as shown on a single-sheet prepared by AAL Land Surveying Services Inc., of West Melbourne, Florida, signed, sealed and dated September 28, 2007, including the easement agreement, subject to the following conditions:

- a. The applicant shall not be entitled to record the final plat until all subdivision improvements are constructed to the satisfaction of the City, or an improvement guarantee of at least 110% is provided to the City to ensure the completion of the improvements.

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- b. The applicant shall provide the additional required documents, pursuant to Appendix D, Chapter 8, Section 8.5 (d) (4) prior to plat recordation.
- c. The applicant shall provide the additional required information and certificates as required by F.S. 177.071 and 177.081 prior to recordation of the final plat.
- d. Only two building permits may be issued on any portion of the plat prior to recordation of the final plat.
- e. The developer will enter into a satisfactory agreement with the City of Melbourne that clearly defines the rights and responsibilities for the City owned wetland property located immediately east of the project site and included in the project development plans. Approval of the final plat is conditioned upon:
 - 1. Execution of the Easement for Wetland Enhancement by TFM Enterprises, Inc., and Calico Heights Homeowners Association, Inc.
 - 2. The approval of the Conservation Easement by the St. Johns River Water Management District.
 - 3. The approval of the Easement for Wetland Enhancement by City Council.
 - 4. The approval of the Conservation Easement by City Council.

Mrs. Corby said that the preliminary plat was approved in 2004. She asked if the drainage issues have been resolved on the portion of this development that abuts residential development.

Mrs. Dittmer said she is not aware of any drainage problems with this development; however, they would have been addressed by the Engineering Department during the construction plan review.

In response to Mrs. Corby, Mrs. Dittmer explained that the right turn only restriction from this development onto Croton Road probably relates to the proximity of the intersection.

There were no disclosures and no public comments.

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

20. SITE PLAN APPROVAL (SP-2007-17) PARKWAY COMMONS RETAIL CENTER, PHASE 1: (Public Hearing) A request for site plan approval to allow the development of Phase 1 of a retail commercial project with 54,000± square feet on an 18.88±-acre portion of a 30.74±-acre parcel zoned C-1 (Neighborhood Commercial), C-P (Commercial Parkway), and R-2 (One-, Two-, and Multiple-Family Medium Density Residential), located west of Wickham Road, north Parkway Drive, and south of Grand Meadows

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Boulevard. (Owner - Wickham Corporate LLC/Lake Washington Station/Park Place II, PSP) (Applicant - Forte Macaulay Development Consultants) (Representative - Ryan Rusnak) (P&Z Board - 10/04/07)

At the request of the applicant, Council postponed this item until the November 27 meeting.

21. ORDINANCE NO. 2007-86 (CPA-2007-06) BEACH CLUB 160 CONDOMINIUM ASSOCIATION: (First Reading/Public Hearing) An ordinance providing for a text amendment to the Comprehensive Plan to allow a 10.7-acre complex zoned R-2 (One-, Two-, and Multiple-Family Medium Density Residential), located on the south side of Eau Gallie Boulevard, west of A1A, to rebuild at its current density (14.95 dwelling units per acre) in the event the structures on site are destroyed by more than 50 percent of their replacement cost. (Owner/Applicant/Representative - Beach Club 160 Condominium Association, Inc.) (P&Z Board - 7/19/07)

Attorney Gougelman read Ordinance No. 2007-86 by title. Mrs. Dittmer reviewed the item. Mayor Goode opened the public hearing.

Gene Boger, representing the Beach Club 160 Condominium Association, was present and available for questions.

Mayor Goode closed the public hearing.

Moved by LaRusso/Contreras for approval of Ordinance No. 2007-86 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

22. ORDINANCE NO. 2007-87 (Z-2007-1120AD/LDR-2007-06/FOC-2007-07) ZONING LIMITATIONS: (First Reading/Public Hearing) An ordinance amending Appendix B, Article IX of the City Code entitled, "Limitations," by changing the limitations of how and when a property is eligible to request a zoning amendment. (Applicant - City of Melbourne) (P&Z Board - 10/04/07)

The City Attorney read the ordinance by title and Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval of this request.

There were no comments during the public hearing.

Moved by Meehan/Thomas for approval of Ordinance No. 2007-87 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

23. COUNCIL ACTION RE: Lease agreements between the City of Melbourne and the Florida East Coast Railway, LLC (FECR) for additional parking during the construction of the new City Hall.

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- a. Approval of two lease agreements between the City of Melbourne and FECR for parking areas between Strawbridge Avenue and Palmetto Avenue; a vacant lot north of Palmetto Avenue - initial lease amount of \$11,500; and a parking area encroachment on Depot Drive - initial lease amount of \$1,240; contingent on City Attorney approval; authorization for the City Manager to execute the agreements; and providing for annual renewal and annual rental payments.

Moved by Thomas/Contreras for approval of the lease arrangements with the Florida East Coast Railway for the additional parking areas and for the Depot Drive encroachment and authorization for the City Manager to execute lease agreements that will provide for annual rental and annual renewal rates as stated in the October 2, 2007 letter from M.O. Bagley with the FECR subject to the City Attorney's review and approval of the terms of the leases. Motion carried unanimously.

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

- b. Approval of an appropriation of \$18,615 from Downtown CRA - Reserve for Future Projects to cover non-refundable processing fees, security deposits, and the first annual rental payments associated with the leasing of parking areas on Palmetto Avenue and a parking encroachment on Depot Drive.

Moved by Meehan/LaRusso for approval of initial funding of \$15,375 associated with the cost to lease additional parking areas for City Hall be provided by the Downtown Melbourne CRA and initial funding of \$3,240 associated with the cost to lease the Depot Drive encroachment be provided by the Downtown Melbourne CRA; and that the subsequent contract years be funded by the Downtown Melbourne CRA contingent upon CRA funding availability. Motion carried unanimously.

The CRA remained convened for the following item:

24. COUNCIL ACTION RE: Approval of an amendment to the existing contract with Clark Sales Display, Inc. for additional funding of \$3,525 for holiday decor in the Historic Downtown Melbourne area and transfer of \$745 from Reserve for Future Projects into Rentals and Leases.

Moved by Meehan/Palmer for approval of an amendment to the existing contract with Clark Sales Display, Inc. in the additional amount of \$3,525 for holiday decor in Downtown Melbourne and transfer of \$745 from Reserve for Future Projects into Rentals and Leases. Motion carried unanimously.

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

25. COUNCIL DISCUSSION RE: Discussion of a Fire Assessment Fee as potential replacement revenue source. (Requested by Council Member Kathy Meehan)

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The following is an excerpt from the agenda report: *At the October 9, 2007 Council meeting, a motion to pursue a fire assessment fee study and take the initial steps to hold a public hearing on November 27 to consider a resolution of intent did not receive a second. No further action was taken. Council Member Kathy Meehan requested that this item be brought back to Council for clarification and further discussion.*

Mrs. Meehan said she did not act on this item at the October 9 meeting. However, since that time she received a memo from the Legislative Director of the Florida League of Cities who states that the estimated fiscal impact of the Legislature's current property tax proposal is at least two billion dollars in the first year. Mrs. Meehan stated that this is enormous. She is concerned and that is why she wanted to return this item for further consideration.

The City Manager pointed out that Deputy City Manager Amy Elliott has provided a clarification memorandum in the package. Budget Officer Karen Windsor is available to provide graph materials. Mr. Schluckebier reviewed the agenda report and said that we are looking to take the first step to get the fee in motion.

Under the Statute, there is a multiple step process that is a prerequisite to the City implementing a fee. At the last meeting, we were looking to take that first step. In Brevard, there are only two governments that have done this – Cocoa and Brevard County – and their rates vary tremendously. For a single family home, Cocoa's is in the range of \$60 and the County's is in the range of \$200. The City Manager stressed that we are not asking Council to hire a consultant at this meeting; we would like to proceed with notices, the hearing, etc.

Continuing, he reported that \$21.5 million in our \$70 million General Fund is derived from property taxes. It is very clear that property taxes are on the Legislature's hit list. Something is likely to come from the Legislature to the voters in January that will limit property taxes. After that, our choices will get decidedly ugly, drastic and limited. To the extent possible, if things we are doing now can be financed in a different way, we would like to proceed in the direction of replacement revenue – not additional revenue.

The City Manager concluded by saying it is up to the City Council to set the future property tax rate. Council will have more constraints in the future and staff is recommending Council give this alternative revenue at least a review.

Mr. Thomas said he is not thrilled with the idea of replacing a reduction in property taxes with a fee; however, he does feel it is important that we give ourselves the option down the road.

Moved by Thomas/Meehan 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.

Mrs. Palmer said she does not understand why this item returned when nobody voted for it last time. She added that the City Manager left messages with her wanting to discuss

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this issue; however, she did not want to have a private conversation. This is something that needs to be discussed publicly – and publicly Council turned this down.

Mr. Contreras said that in his discussion with the City Manager, he conveyed that his biggest issue is determining where the burden of responsibility will shift. He wants to know if this means those who don't pay will now pay and those who pay a whole lot based on value of assessment will pay less or more.

Budget Officer Karen Windsor offered that the fire assessment fee is not based on valuation. It might be based on square footage, but not necessarily. For example, the City of Cocoa has a flat fee for all residential units. Brevard County bases its fee on square footage.

Ms. Windsor displayed a slide that shows the millage rate would be reduced if a fire assessment fee is approved. The estimate is that the current millage rate of 4.4751 would be reduced to 2.9891. That would offset the \$6 – \$10 million we anticipate receiving from the fire assessment fee. That would reduce everyone's taxes, as long as they are on the tax rolls, by about 30% of the City millage.

Mrs. Palmer asked if Brevard County lowered its millage rate. The City Manager said we were told they did. He doesn't know if they did a dollar for dollar replacement and elaborated on their process. He informed Council that staff will try to discover exactly what the County did.

Mrs. Palmer said that she could be influenced on this item if the City was at risk of not being able to fund the Fire Department. She added that she can't imagine one person believing that we would lower the millage rate if we adopt this fee.

Mr. Contreras pointed out that we don't know what is going to hit us. If we don't have this in motion by a certain date, it won't happen. He would like to put this on the table as an option, but not a commitment. However, he would like to know where the burden will fall.

Mrs. Corby said she brought this up as a potential revenue source during budget discussions. She noted that she would support this as long as two building blocks are in place. The first is that the fee would be used to enhance the Fire Department by providing additional personnel, equipment and service. The assessment would cover specific items. The second would be that the fee would be used to offset – to replace – the General Fund money that funds the Fire Department. The same amount of monies coming in from the fire assessment would be deducted from the General Fund and ultimately given back to the taxpayers.

Continuing, Mrs. Corby said that after the last Council meeting she asked the Fire Chief, as the leader of the department, how he envisioned the fire assessment would be beneficial to the department. She asked him to not give up on this because there may ultimately come a time when we need to implement this fee. Mrs. Corby pointed out that during the July 23 budget workshop meeting, the fire assessment fee was listed on the potential revenue list as providing \$6 - \$7.5 million of revenue; however, at the August 9

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workshop meeting when Council was asked to rank revenue options, the fire assessment fee was not even mentioned as an option.

After that Council meeting, she met with the City Manager and Assistant City Manager and asked what reassurance Council has that the monies collected will go back to the taxpayers; what mechanisms are in place to ensure this money will be deducted from the General Fund. Mrs. Corby said that Dr. Schluckebier's response was that "things can always change."

Mrs. Corby concluded by saying she thought long and hard about this item. She does think that some day we may need to implement this but she doesn't think that day is here yet. She does not feel comfortable and confident that this money will be given back to the taxpayers with a reduction in the millage rate; therefore, she won't support the fire assessment.

The question was called. The roll call vote was:

Aye: Contreras, Meehan, Thomas and Goode

Nay: Palmer, Corby and LaRusso

Motion carried.

26. COUNCIL ACTION RE: Board Appointments

a. Appointment of one regular member to the Code Enforcement Board.

Mrs. Meehan nominated Bennie Hopkins. Moved by Thomas/Contreras to close the nominations. Motion carried unanimously. Moved by Palmer/LaRusso to reappoint Bennie Hopkins. Motion carried unanimously. (November 12, 2007 – November 11, 2010)

b. Appointment of one member to the Golf Courses Advisory Board.

Mr. LaRusso nominated Robert Paquette. Moved by Palmer/Contreras to close the nominations. Motion carried unanimously. Moved by LaRusso/Contreras to reappoint Robert Paquette. Motion carried unanimously. (November 9, 2007 – November 8, 2010)

27. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Meehan asked Council to support instructing staff to research and return to Council for discussion an ordinance that will allow dogs to dine with their owners at restaurants that have outdoor seating areas.

Following a brief discussion, Attorney Gougelman explained that Florida Statutes lay out the mold and authorize cities with restaurants that have outdoor dining areas to permit dogs to come in and be with their masters while they eat. If the City authorizes this by

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ordinance, the owner of a restaurant would have to obtain a permit and post various signs.

Moved by Meehan/Palmer to authorize the City Attorney to research and return to Council with a draft ordinance. Motion carried unanimously.

Mr. Contreras referenced the letter that was sent to the Governor and the Legislative Delegation (authorized at the September 25 meeting) asking the Governor, Senate and House Leadership and the Brevard Legislative Delegation to conduct a “root cause analysis” on the inequity of the state’s property tax structure. He noted that the Governor responded and indicated that the Florida Taxation and Budget Reform Committee is reviewing the budgeting and taxing policies and procedures. Mr. Contreras asked that the initial letter sent to the Governor also be forwarded to this committee. There were no objections by Council.

Mrs. Palmer stated that the gateway sign for Historic Downtown Melbourne looks fabulous and it was money well spent. It provides a sense of “place” and indicates that you have arrived in Downtown Melbourne.

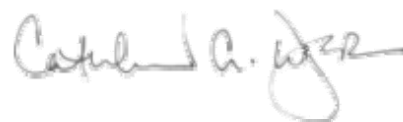
The City Manager noted that the recently adopted ordinance regarding the process for sale, disposition and lease of City property unintentionally places regulations on the Airport Authority that will make it difficult for them to do business. He said he would like authorization for the City Attorney to return with an exemption to that ordinance.

Moved by Contreras/Meehan to authorize the City Attorney to draft an exemption for the Airport Authority on the recent ordinance that provides a process for the sale, disposition and lease of City property. Motion carried unanimously.

28. ADJOURNMENT

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

The meeting adjourned at 10:20 p.m.



City Clerk – 11/5/2007

Approved by Council: _____