

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
NOVEMBER 27, 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. Father Rob Goodridge, Holy Trinity Episcopal Academy, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Kathy Meehan	Vice Mayor, District 3
	Richard Contreras	Council Member, District 1
	Mark LaRusso	Council Member, District 2
	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 proclaimed December 7, 2007 as “Holy Trinity Episcopal Academy Day”, and presented the proclamation to Father Rob Goodridge and Cathy Ford, Head Master, Holy Trinity Episcopal Academy.

5. Approval of Minutes - November 13, 2007 Regular Meeting

Moved by Meehan/LaRusso for approval. Motion carried unanimously.

6. City Manager’s Report

City Manager Jack Schluckebier reported that the Brevard Legislative Delegation has changed its meeting date to February 27, 2008. Legislative priorities will be presented to the City Council at a January meeting.

Council Member Joanne Corby commended staff for the new format of the Public Works newsletter and the grant recently awarded to the Melbourne Fire Department. Additionally, she asked that the information provided by Deputy City Manager Amy Elliott regarding challenging fiscal issues in the General Fund be provided to Council during its budget workshop meeting in January.

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With regard to elimination of out of state travel, the City Manager confirmed that this places staff on notice; however, there will be exceptions. He noted that this does not apply to the City Council – the City Council will continue to approve its own travel.

Regarding the recommendation in the memorandum to discontinue the \$25 Christmas gift certificates beginning with the 2009 fiscal year, Mrs. Corby asked if this could be offered to employees as an option now. The City Manager replied yes.

Mrs. Corby thanked Housing and Community Development Director Melinda Thomas for her follow-up report on CDBG funds. Following a brief discussion, Mr. Schluckebier confirmed that the CDBG funds are granted on a reimbursement basis. The City draws down on a letter of credit from the government, which is amended each year by the amount of the fiscal year grant.

7. Public Comments

Pat Poole, 805 East Palmetto Avenue, mentioned the memorandum to her from Vice Mayor Kathy Meehan regarding her (Mrs. Poole's) attendance record at City Council meetings. Mrs. Poole described the two special meetings that she missed while she was on Council and stated that no Council action was taken at those meetings. She read an excerpt from the communication, which points out that she has never missed a regular meeting.

Martin Lamb, 2034 Adams Avenue, submitted a petition signed by several residents on Adams Avenue and Croton Road about the residents located at 1076 Wilson Street. He discussed the problems caused by six to eight dogs located on that property and stated that he is concerned about the treatment of the dogs. Mr. Lamb said that he has reported this to Code Compliance and has been assured it will be addressed. He commended City staff for being so helpful and responsive.

Norma Levy, 855 Sanderling Drive, spoke in support of the school resource officer remaining full time at West Shore Junior/Senior High School.

The City Manager updated Council on the school resource officer contract negotiations with the School Board. Although we do not expect to obtain substantial new revenue from the school resource officer program, we believe that we will come close to retaining the same number of officers currently in the program.

Jennifer Cope, 965 Whitmire Drive, asked Council to support a school resource officer contract with the School Board that would allow West Shore Junior/Senior High School to retain a full time officer.

UNFINISHED BUSINESS

8. 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

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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 Boulevard. (Owner - Wickham Corporate LLC/Lake Washington Station/Park Place II, PSP) (Applicant - Forte Macaulay Development Consultants) (Representative - Ryan Rusnak) (Postponed - 10/23/07)

Note: in addition to correspondence in the agenda package, Council received the following: E-mail dated November 26 from Anthony Mirabito, President, Parkway Meadows Homeowners' Association, relating to drainage issues. E-mail dated November 26 from William Kunzler, expressing concerns about the proposed development. E-mail dated November 26 from Debra Etrick, asking Council to prevent the proposed development. E-mail dated November 26 from Diane Lazzara, 3364 Lake View Circle, expressing opposition to the proposed development. Letter dated November 26 to Philip Nohrr from Scott Nickle, Bussen-Mayer Engineering Group, transmitting exhibits to illustrate the reduction of the drainage basin area east of the Parkway Meadows property that will occur as a result of the Parkway Commons development.

Mrs. Dittmer briefed Council and located the property on the map. The following is an excerpt from the agenda report:

Council postponed this item at the request of the applicant at the October 23 meeting.

The commercial portion of this project, Phase 1, had been on hold due to traffic capacity issues on Wickham Road. Traffic concurrency can now be met due to a reduction in roadway traffic counts and is detailed in the staff memorandum. A total of 484 parking spaces is proposed on site with associated landscaping. A six-foot masonry wall is required to be installed adjacent to single-family subdivisions to the north and west within 30 days of site construction commencement. Additionally, a 30-foot buffer will remain along the west property line.

During the public hearing portion of the Planning and Zoning Board meeting of October 4, two residents spoke against the approval of the request due to concerns of flooding and traffic issues. All stormwater permitting will be reviewed by both the City of Melbourne and St. Johns River Water Management District.

Correspondence from the adjoining property owner to the north, Mark Soliman, was previously distributed to Mayor and Council and is included in the package. A separate memorandum from City Engineer Jenni Lamb is attached, addressing Mr. Soliman's questions regarding shared stormwater management issues. Mr. Soliman also questioned this project's traffic generation. This project decreased the proposed commercial square footage from the original submittal. Additionally, the project has always had a traffic impact on Wickham Road, north of the Post Road intersection, which is why it has been held up pending available traffic capacity.

The Planning and Zoning Board, after a brief discussion regarding the existing flooding problems mentioned by the residents, voted five to two to recommend approval of the

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three-sheet plan prepared by Bussen-Mayer Engineering Group, Merritt Island, Florida, Project No. 358001, with a signed and sealed date of August 31, 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 owner/developer shall not subdivide any part of the land into more than two lots without receiving subdivision approval.*
- c. *Appropriate environmental permits, including permitting for the gopher tortoises and scrub jays, must be obtained as part of the construction plan review process.*
- d. *The timing of Phase 1B (master stormwater pond) shall be consistent with the treatment necessary for Phase 1A.*
- e. *The historic drainage patterns from the property to the north and west shall be accommodated in the proposed storm water management system design and will be reviewed during the construction plan process.*
- f. *No parking, loading or unloading of vehicles shall occur between the hours of 10:00 p.m. and 6:00 a.m., pursuant to City Code, Appendix D, Chapter 9, Article V, Section 9.76(e).*
- g. *In conjunction with Phase 1A, a six-foot high masonry wall shall be required along the north and west sides of the property, where adjacent to single-family residentially zoned land, pursuant to Appendix D, Chapter 9, Article III, Section 9.44.1. The construction of the wall shall commence within 30 days of site development.*
- h. *The applicant shall maintain a minimum 30-foot vegetative buffer, including the berm, vegetation and a conveyance swale, to be located between the Parkway Meadows Subdivision and the proposed project.*
- i. *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.*
- j. *The proposed building shall be substantially consistent with the rendering submitted by the applicant.*

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- k. *In conjunction with Phase 1A, the applicant shall construct a dedicated right-turn lane at the northernmost driveway from Wickham Road. The details of the right-of-way improvements shall be mutually approved by Brevard County and the City Engineer during the construction plan review process.*
- l. *In conjunction with Phase 1A, the applicant shall fund the installation of a traffic signal at the northernmost access drive on Wickham Road. A signal analysis must be completed to the satisfaction of the City of Melbourne and Brevard County in conjunction with the construction plans for Phase 1A of the project, with final permits by Brevard County.*
- m. *A right-turn/deceleration lane will be required at the easternmost entrance to the project on Parkway Drive. If the alignment incorporates a shared drive with the 7-11 convenience store, a right-turn lane will be required with the development of Phase 1C. The right-turn lane will be eligible for a portion of the transportation impact fees for system improvements as approved by the City Engineer. Should the applicant not be able to negotiate a cross access arrangement with the owner of the 7-11, the project's entrance drive and right-turn lane shall be shifted west on Parkway Drive to be designed during the construction plan review process for Phase 2 (the 11.86-acre area). Additionally, it shall meet access management guidelines for safe separation distance between curb cuts.*
- n. *In conjunction with Phase 1A, the applicant shall provide a minimum of one internal access point to provide a vehicular connection to the project to the north (Crossings at Baymeadows, SP-2005-15).*
- o. *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 \$33,609.60 for transportation, water and sewer impact fees. Payment must be received by the City of Melbourne within 10 business days of the date of rendition of this Development Order by City Council approval. This 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.*

Council Member Richard Contreras asked the City Engineer to provide her background, education and experience. Jenni Lamb stated that she has been the City Engineer for over two years. Prior to that, she worked for six years in the Engineering Department performing development review. She has a degree in Environmental Engineering. She chose this field because it focused on drainage.

Mr. Contreras said that many residents in the adjacent Parkway Meadows Subdivision are concerned about flooding, particularly along the perimeter of this site plan. He added that it is his understanding based on correspondence received that the neighbors abutting this property have not had any standing water or flooding.

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Mr. Contreras asked Mrs. Lamb if, based on her expertise, this site plan – both design and construction – will result in the historical drainage pattern that exists today being blocked. Mrs. Lamb replied no and added that this is a conceptual plan. She referenced the condition relating to drainage and said that during construction plan review, Engineering will ensure that there will be no adverse effects on the neighbors. She read condition “e” and pointed out that Engineering staff added this condition to the project.

Mr. Contreras asked Mrs. Lamb to explain in layman’s terms the meaning of that condition. Mrs. Lamb said that staff recognizes there are historic drainage patterns, water flows onto this property from properties to the north and west. The design of Parkway Commons will have to accommodate the historical flows through swales, piping, their own stormwater management system, etc. At this point we do not know exactly how they are going to handle that; however, it will all be part of the engineering/permitting process.

Mr. Contreras said that this site plan is conceptual and the construction details, including stormwater calculations, drainage, etc. are not required as part of the site plan. Mrs. Lamb agreed and said they are not required at this step of the site plan process. The stormwater calculations and hydraulic calculations will come after approval of the conceptual plan.

At the request of Mr. Contreras, Mrs. Lamb provided details on the construction review process, which receives a greater level of review. Construction will occur based on those plans.

Mr. Contreras asked what would happen if flooding occurs on the site after it is constructed. Mrs. Lamb replied that if flooding occurs, even if construction plans and stormwater calculations show that it will not, the City will put the developer and engineer of record on notice that there needs to be a re-design/fix. A stormwater maintenance agreement will require the developer to keep the systems operating. Additionally, the City can hold up certificates of occupancy until these issues are addressed.

Mr. Contreras said that some of the correspondence alludes to the Crossings project. He asked how that project could affect Parkway Meadows and the Parkway Commons retail project. Mrs. Lamb said that the Crossings at Baymeadows, located to the north of the subject property, has its own treatment pond but it outfalls/flows onto this property. That will have to be accommodated in the Parkway Commons design. If it is not accommodated in the Commons design, it may affect Parkway Meadows. However, this is historic flow; it will be reviewed and it must be accommodated.

Responding to Mr. Contreras, Mrs. Lamb confirmed that the development will have to meet the criteria of the City of Melbourne and the St. Johns River Water Management District. Both agencies are aware of historic drainage in the area and the project will get scrutinized.

Mrs. Corby asked who would be accountable if there is a drainage problem during a big storm. Attorney Gougelman said that with regard to the City having liability because we

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permitted a project, there is very little case law dealing with this issue. If in the future the system doesn't operate correctly and causes flooding, we would first determine ownership of the system. If the system is owned and operated by the City, the City could be held liable for negligent operation. If the system is owned and maintained by a private owner, adjacent property owners could file a lawsuit against the owner of the system.

Mayor Goode called for disclosures. Mr. Contreras revealed that he spoke with the City Manager and City Attorney about this item.

The Mayor opened the public hearing.

Phil Nohrr, 1800 West Hibiscus Boulevard, attorney representing the applicant, stated that they are seeking site plan approval – not a permit for drainage. He explained that drainage permits will occur later and the plans will be reviewed by the proper agencies. He pointed out that they are before Council as part of an objective process to determine whether or not they meet the criteria for site plan approval. Mr. Nohrr stated that in the past when they applied to change from commercial to residential on this property, Council advised that the property should remain commercial. That is what they are seeking at this meeting.

Continuing, Mr. Nohrr referenced the conditions, which they agree with. He elaborated on several conditions and stated that they have tailored the project in an attempt to be a good neighbor. Regarding the drainage/flooding issues, he noted that this is not the time and place; however, there is a condition in place and they will accept the historical flows on this property.

Mr. Nohrr said when the project is finished, they will reduce the historical drainage to the west by 82%. This development will reduce the basin as far as retention and the flow of the water to the west. Additionally, there will be a 200' buffer between the west property line and any commercial development on the property.

Mr. Nohrr referenced (and submitted another copy) the letter from their engineer describing how they are reducing the drainage basin by 82%. Mr. Nohrr concluded by saying they believe this site plan meets all of the City's objective criteria. They agree with the findings and conditions and acknowledge and accept responsibility for the drainage flow. Mr. Nohrr said that the engineer for the project is present and available for questions.

Mr. Contreras referenced the two exhibits submitted with the letter from Bussen-Mayer (Exhibit A, existing conditions of the site, and Exhibit B, depicting Parkway Commons development). He asked if the applicant has had an opportunity to share this information with the adjacent homeowners' association.

Mr. Nohrr replied no. He explained that during previous discussions, the residents wanted to know if the applicant has final drainage plans ready for submittal. Those documents will be public records after they have been filed with the City and SJRWMD.

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He commented that they have reached out and tried to establish dialogue, but they can't provide what the residents are asking for at this time.

Mr. Contreras asked why the site plan has two and one-half times more parking than required. Mr. Nohrr replied that they are thinking ahead to Phase 2. Phase 2 can't be built because of concurrency issues on Wickham Road, but they are anticipating that development. (See Mr. Nohrr's comment below for clarification.)

In response to Mr. Contreras, Mr. Nohrr elaborated on the traffic concurrency issue. He confirmed that all of his dealings relative to traffic counts and traffic concurrency have been with Brevard County.

Anthony Mirabito, 3498 Saddle Brook Drive, President, Parkway Meadows Homeowners' Association, informed Council that he has a background in engineering. He reviewed the drawings and documents for the Crossings development and Parkway Commons retail center. He noted that he shares many of the emotional concerns raised by the homeowners' membership; however, he would like to address two major engineering concerns – water drainage runoff and traffic control and safety.

Regarding water drainage, the average elevation of home floors in Parkway Meadows is 31' and the lake surface water elevation is 26'. The Crossings development has raised the ground level of its property by about four to five feet. Its streets and retention ponds are five feet higher than Parkway Meadows. The entire 35 acres of the Crossings conducts rainwater to its retention pond. That pond has one outlet located approximately 50' from Parkway Meadows. A normal rainfall of four inches an hour can result in the Crossings outflow exceeding 1,000 gallons per second when the retention pond is full. Mr. Mirabito asked where this water is conducted. At this moment there is no demonstrated attention being given to a master plan for water drainage.

The Mayor called time on Mr. Mirabito.

Carmen Glasser, 3217 Park Place Court, said that the residents are concerned about confusing traffic schemes. She is in favor of the land being developed in accordance with its rightful zoning. Their area is lacking infrastructure and the right type of commercial development. This development will not impact overcrowding of the schools, which is a major concern previously discussed when the property was proposed for residential use. Ms. Glasser stated that she is in favor of the developer reserving the natural wetlands.

Regarding drainage, Ms. Glasser described in detail her experience with standing water on her property. When the Crossings project was being developed, water was pumped south on the future site of Parkway Commons. The water was supposed to follow the historical flow to the south; however, instead it flowed west and backed up into her yard.

Ms. Glasser informed Council that the SJRWMD is aware of the inconsistency regarding the historical flow of water. In the meantime, she does not believe it is responsible to allow future development of this land, which has a clearly documented and unresolved drainage issue. Regarding the letter from the applicant's engineer about an 82%

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reduction in drainage, she asked where this concrete number came from if there are no engineering plans in place.

Continuing, Ms. Glasser commented on the following: whether the area designated as wetland behind the Park Place cul-de-sac will remain natural vegetation; placement of dumpsters; placement of the loading dock on the building closest to her home; and the importance of constructing a dedicated right hand turn lane from east bound Parkway Drive onto southbound Wickham Road.

Cathy Jones, 3453 Saddle Brook Drive, discussed the short notice given by the developer for a meeting and the interference of the Thanksgiving holiday. She discussed the history of the property, referenced previous minutes, and noted the concerns previously stated by Parkway Meadows residents about flooding and traffic. Ms. Jones noted that in 2006 the residents submitted a petition of opposition and she feels this petition is still valid because the new proposal is not different from the past proposal. Additionally, the property now has the added problem of drainage from the Crossings development.

Continuing, Ms. Jones explained that three developments in the area – Grand Haven, Bay Meadows and the Crossings – were approved by the City and the SJRWMD. Each resulted in water flowing onto their (Parkway Meadows) property. Ms. Jones asked what guarantee the City and St. Johns can provide that this will not happen a fourth time. Although this is a preliminary plan, specifics should be required at this point due to flooding history of the property.

Ms. Jones concluded by saying that the homeowners don't have the financial resources that the developer has. Their biggest resource is the City Council and they are counting on the City Council to take their concerns into account when making the decision.

Mr. Contreras referenced the three previously approved site plans, which caused neighborhood flooding. He asked if the City was contacted. Ms. Jones replied yes and noted that a pump was finally installed. She elaborated on the operation.

Mr. Contreras asked the City Engineer to indicate whether this was a City issue or County issue relative to drainage. He noted that a lot has been done in the area with drainage, including the Wickham Park retention ponds, dredging in the area, etc.

Deputy City Manager Howard Ralls said that most of Parkway Meadows was permitted by Brevard County before annexing into Melbourne. A large part of the flooding issue can be related to the transition from County to City and the interpretation of the plans. The adjacent area to the west of Parkway Meadows is a slough and the land in that slough was higher than the overflow from the pond. The overflow didn't flow out of the pond, it flowed into the pond and filled up. There were design issues; however, the City did not review those plans. Mr. Ralls added that he's not pointing a finger, he's just indicating that these are the cards we were dealt.

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Mrs. Lamb clarified that the cost of the pump referenced by Ms. Jones was shared by the County, the developer and the design engineer because of design problems created by the developer of Parkway Meadows. The flooding was not caused by anyone outside of Parkway Meadows.

Mrs. Lamb confirmed for Mr. Contreras that Brevard County has made drainage improvements in order to get the water to the east quicker and to provide options during a major storm event.

Mrs. Palmer pointed out that we are in a multi-year drought. She asked if the review of the plans will take into account normal rainfall. Mrs. Lamb replied yes and said they will look at seasonal high water levels. Review is based on historic elevations of water and storm water is based on the 25-year, 24-hour storm event, which means approximately eight inches. This rate is comparable to Hurricane Erin.

Pat Poole, 805 E. Palmetto Avenue, discussed the history of Parkway Meadows and said she tried to caution about the slough when they started building. Mrs. Poole stated that this is a crucial area of the City and traffic is already horrible in this area. She asked if the idea is to see how much of the land can be developed. She begged Council to listen to the residents because she has seen the flooding that has been described.

Mr. Nohrr responded to the public hearing comments as follows: on any wetland there will be a 25' natural wetland buffer that is part of their development; the loading docks will be a minimum of 250' from the west property line; the dumpster will also be 250' from the west property line; the dumpster will have a wall enclosure and landscaping; and there will be a six-foot masonry wall farther west from the dumpster and loading docks.

Mr. Nohrr clarified the comment made earlier about additional parking. He confirmed it is for Phase 2, but it is possible that some of the property on Wickham Road will be developed for restaurants, which will require additional parking. Mr. Nohrr reported that according to their project engineer, the average elevation of the slabs of the property closest to their development is 34.33', not 31' as referenced by one of the speakers.

Mr. Nohrr closed by saying they are not attempting to design a project that will negatively impact their neighbors, or that will create flooding within their own development. The neighbors have a right to join in the scrutiny of the development as they go through the permitting process, but at the end of the day the project will be designed and built based on the engineering criteria developed by the experts.

The Mayor closed the public hearing.

Mr. Contreras said that apparently the applicant and the adjacent residents attempted to meet during the Thanksgiving holiday; however, the timing was not good. He would like the information presented to Council from the applicant's engineer communicated to the neighbors.

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Moved by Contreras/LaRusso to postpone this item until the December 11 meeting to allow the applicant and the neighborhood principals time to meet and discuss.

Mr. Schluckebier suggested that Council determine whether to conduct another public hearing. Mayor Goode said he does not believe it was Council Member Contreras's intention to conduct another public hearing. Mr. Contreras was seeking additional time to allow for dialogue.

The question was called. Motion carried unanimously.

9. ORDINANCE NO. 2007-88 (Z-2007-1123) MICHAEL PAVLICK: (Second Reading/Public Hearing) An ordinance changing the zoning from C-1 (Neighborhood Commercial) to C-3 (Central Business District) on two parcels totaling 0.45± acres, located on the south side of New Haven Avenue, east of Helen Street, and west of Goff Place. (Owner - Michael Pavlik and Eye Docs, Inc.) (Applicant/Representative - Michael Pavlik) (First Reading - 11/13/07)

Attorney Gougelman read Ordinance No. 2007-88 by title. There were no disclosures from Council and no public comments.

Moved by Meehan/Contreras for approval of Ordinance No. 2007-88 based on the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

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

Motion carried unanimously.

10. ORDINANCE NO. 2007-90 (ED-2007-03) LIVETV, LLC: (Second Reading/Public Hearing) An ordinance granting an ad valorem tax exemption for a period of three years totaling an estimated \$47,310.75. (First Reading - 11/13/07)

The City Attorney read the ordinance by title. There were no public comments.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-90.

Mr. LaRusso said he read in the newspaper that LiveTV was considering other options. He noted that their business is important, and he would like for the applicant to provide an update.

Mayor Goode opened the public hearing.

Harry Ericson, President, LiveTV, stated that it is their desire and intent to stay and grow in Melbourne. They would like to hire people in the area and further expand.

The question was called. The roll call vote was:

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

Motion carried unanimously.

11. ORDINANCE NO. 2007-91 SALE OR LEASE OF CITY PROPERTY: (Second Reading/Public Hearing) An ordinance amending Chapter 2, entitled "Administration," as it relates to the disposition of real property, by exempting certain sales and lease of property subject to the jurisdiction of the Melbourne Airport Authority. (First Reading - 11/13/07)

The City Attorney read Ordinance No. 2007-91 by title. In response to Council Member Cheryl Palmer, Attorney Gougelman confirmed that this ordinance applies only to properties controlled, owned or leased by the Airport.

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

Moved by Palmer/Contreras for approval of Ordinance No. 2007-91. The roll call vote was:

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

Motion carried unanimously.

12. ORDINANCE NO. 2007-92 (Z-2007-1121AD/LDR-2007-07/FOC-2007-08) OLDE EAU GALLIE ART OVERLAY ZONE: (Second Reading/Public Hearing) An ordinance amending Appendix B, entitled "Zoning," amending Article IV, Section 1, exceptions and variations to height regulations; amending Article V, District Regulations, by adding Section 3, "Overlay Zone Regulations." (Applicant - City of Melbourne and the Olde Eau Gallie Riverfront Community Redevelopment Agency) (First Reading - 11/13/07)

City Attorney Gougelman read Ordinance No. 2007-92 by title. There were no comments during the public hearing.

Moved by LaRusso/Meehan for approval of Ordinance No. 2007-92. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

13. CONSENT AGENDA:

Mayor Goode reported that Council Member Corby requested Items "j" and "k" be removed from the consent agenda. Mr. LaRusso asked for Item "b" to be pulled. He would like to know the date of the contract the City is "piggybacking."

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Mayor Goode reminded Council that members must ask by Monday at 3:00 p.m. prior to Council meetings if they would like to pull an item from the consent agenda.

Responding to Mr. LaRusso, the City Manager said we typically try to take the most recent bid available. The exact date will be determined and that information will be provided.

Moved by Contreras/Meehan for approval of the consent agenda, with the exception of Items “b”, “j” and “k.” Motion carried unanimously.

- a. Approval of a six-month extension of the current mowing contract for north area roadways, building complexes, and parks, Greener Pastures Turf Corp., Palm Bay, FL - \$39,660.90.

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

- b. Purchase of five vehicles, Duval Ford, Jacksonville, FL - \$125,591.
- c. Purchase of tires, Gatto’s Tire & Auto Service, Melbourne, FL - \$140,000; Boulevard Tire Center, Cocoa, FL - \$40,000; and Glenn’s Tire, Melbourne, FL - \$7,000.
- d. Contract award for annual software maintenance and support for essential systems at the Police Department, Tiburon, Inc., Pleasanton, CA - \$81,585.
- e. Continuation of the City’s existing Wide Area Network connections (point-to-point T-1 lines) to department locations outside of City Hall, TelCove Level (3) Communications, Melbourne, FL - \$50,804.80.
- f. Renewal of Datastream 7i maintenance for the inventory and control management software system at the wastewater and water treatment plants, Infor Global Solutions, Inc., Greenville, SC - \$40,003.20.
- g. Purchase of 16 sets of Globe G-Extreme structural firefighting clothing, Bennett Fire Products Company, Inc., Woodstock, GA - \$22,560.
- h. Approval of an appropriation of \$500 from the Law Enforcement Trust Fund to provide funding to support the Fifth Annual Youth Drug Summit on February 23, 2008 sponsored by the Alliance for Neighborhood Restoration and the Brevard County Weed and Seed program.
- i. Travel authorization for Mayor Goode to attend the United States Conference of Mayors 76th Winter Meeting, January 23 - 25, 2008, Washington, D.C.

Note: See next agenda item for action on Items “j” and “k.”

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- j. Resolution No. 2063: A resolution confirming the City of Melbourne's intent to pursue measures to become a "Green Local Government" through improved environmental performance, using criteria and standards developed by the Florida Green Building Coalition, and encouraging the Legislature and Governor to support the Green Local Government program.
- k. Resolution No. 2064: A resolution implementing FY 2006-2007 Fourth Quarter Budget Review recommendations.
- l. Resolution No. 2065: A resolution approving a Sixth Addendum to the Lease Agreement between Robert Scott Harrell and the City of Melbourne extending the lease until December 18, 2008 for property located at 912 East Palmetto Avenue at the monthly rental rate of \$1,175; and authorizing the City Manager to execute the addendum.

14. ITEMS REMOVED FROM THE CONSENT AGENDA

- b. Purchase of five vehicles, Duval Ford, Jacksonville, FL - \$125,591.

Moved by LaRusso/Meehan for approval of Item "b." Motion carried unanimously.

- j. Resolution No. 2063: A resolution confirming the City of Melbourne's intent to pursue measures to become a "Green Local Government" through improved environmental performance, using criteria and standards developed by the Florida Green Building Coalition, and encouraging the Legislature and Governor to support the Green Local Government program.

Mrs. Corby stated that she does not recall Council making a firm commitment to going "green." She said that when this item came up several months ago, she commented that going green is a lifestyle choice – one that she supports, although she tries to avoid the commercialism of environmentally safe procedures. Mrs. Corby pointed out that the City can choose to follow the criteria and standards without the added expenses that go along with a piece of paper that certifies we are following the guidelines.

Mrs. Corby said when she spoke to the City Manager about this item, he said there is no financial commitment. However, there is an application fee, which is just the beginning of multiple fees. Given that we are entering a fiscally challenging year, she recommended that we follow the guidelines without the added expense.

Mr. Schluckebier said he was in error in his answer to Mrs. Corby. He was not aware there was a fee with this particular program. The Mayor asked the amount of the fee. Mrs. Corby replied that it is \$3,000. She added that it is not an astronomical amount; however, it is one of many fees that will result.

Moved by Corby/Palmer that we not approve this item (to deny Resolution No. 2063).

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Mrs. Corby stressed that this doesn't mean the City can't follow the criteria and standards. Mr. Thomas asked about the additional costs associated with this program. Mrs. Corby replied that she is not familiar with this particular certification, but she knows in the name of commercialism of going green there are lots of fees attached to filing an application, having an application reviewed, etc. It's similar to an accreditation type process.

Mr. LaRusso pointed out that some of the types of fees associated with this can be found under agenda Item 23.

Mrs. Palmer said that the City has agreed to look at best practices involved in energy efficiency and she doesn't want to support another addition to home rule from an outside agency.

A brief discussion followed regarding agenda Item 23. Mrs. Meehan and Mr. Thomas asked if we can accomplish the goals in this item without the expense of fees or hiring someone for certification.

With respect to the item on the consent agenda, the City Manager replied that we have the expertise on staff. We can do what's called for without going to any outside agency. The question is whether the City wishes to be recognized for that effort by anyone outside of the City government. He added that if Council decides not to proceed, it will make Item 23 irrelevant.

Mr. Thomas asked if there is any benefit other than media coverage to have this designation.

Mr. Ralls replied that he believes so because the City can lead by example. He doesn't believe the City of Melbourne can save the environment by being designated as a green city, but we can set an example for other cities to try and achieve.

Mr. LaRusso added that the City has a heck of a challenge ahead fiscally in January (statewide property tax reform referendum) and he would like to know the outcome of that before proceeding.

Mr. Contreras explained that in the defense industry, credentialing is critical in providing the edge. However, he doesn't believe this falls into that category. He informed Council that some businesses purchase the standard or training and have someone pollinate the employees with that information and put the practices into place. This is called self-declaring – without spending money – and he would support that approach for this item.

Mrs. Palmer pointed out the notebook of criteria at Mr. Ralls' place and stated that it's not simply a matter of a \$3,000 fee. It is a matter of making promises that we will abide by all the things in that book, which were not written by an elected official in the City. She cautioned that we have residents with homes in foreclosure and who have lost their jobs; Council needs to lead by example by being careful stewards of every cent of taxpayers' money.

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The question was called on the motion to deny the resolution. The roll call vote was:

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

Motion carried unanimously.

- k. Resolution No. 2064: A resolution implementing FY 2006-2007 Fourth Quarter Budget Review recommendations.

Mrs. Corby said her concern for this item relates to the FEMA funding and FIND grant money for the Eau Gallie Pier. She would like to know if there is something the City could have done differently to guarantee receiving this funding.

Mr. Schluckebier explained that when he spoke to Mrs. Corby about this item, it was his understanding we received grant funds and had to turn them back; however, upon closer review he learned this was on a reimbursement basis. The budget was sufficient, so the City is not looking for additional project money.

Mrs. Corby advised that her focus is not on the money, it is on what we could have done differently to ensure that we would receive the money.

Mrs. Dittmer said there is not anything we could have done differently to change the outcome of this. The FEMA funding covered replacement of the pier as it previously existed. The FIND grant could only be used towards expansion or new components of the pier. Staff estimated that the project would cost \$681,000. Based on that we estimated a larger amount of FIND money that we would be eligible to receive. When the project costs dropped almost \$200,000, it changed the estimates. Additionally, the breakdown of the costs for the new component items eligible for FIND money was less. There was more cost shifted to replacement of the pier. Another factor is that the costs for the upland features – landscaping, entranceway, etc. – were not eligible for grant funding.

Mrs. Dittmer concluded by saying the CRA advisory committee understands that CRA funds will need to make up the additional funding in the costs related to the uplands portion of the project.

Mr. Schluckebier confirmed that the City did not receive money and then have to return it.

Moved by Corby/LaRusso to approve Resolution No. 2064. Motion carried unanimously.

Recessed: 8:28 p.m.

Reconvened: 8:38 p.m.

15. RESOLUTION NO. 2066: (Public Hearing) A resolution providing for a uniform method of collecting non-ad valorem special assessments for Fire Assessment Fees, pursuant to Section 197.3632(3)(a) Florida Statutes. (Authorized by Council - 10/23/07)

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Attorney Gougelman read Resolution No. 2066 by title. Deputy City Manager Amy Elliott introduced the item. The following is an excerpt from the agenda report:

This is a resolution to provide Melbourne's notice of intent to levy fire assessment fees for fire protection services. The purpose is to notify the Property Appraiser and Tax Collector so that fire assessments fees can be billed on the November 2008 property tax bills if the City Council elects to collect such fees. The resolution does not set or implement fire assessment fees. It only provides statutory notice. Adoption of this resolution gives the Council maximum flexibility to review this issue and determine whether such a fee should be implemented.

The Mayor opened the public hearing.

Eva Nagymihaly, 3413 Willowwood Drive (unincorporated Brevard County), addressed Council.

Mrs. Elliott clarified for Ms. Nagymihaly that this fee is for fire protection services only. Fire rescue is not a part of this proposal.

Continuing, Ms. Nagymihaly stated that fire protection should be taken out of the General Fund. She stated that non ad valorem fees appear at the bottom portion of tax bills; they are not tax deductible. Placing the fee on the lower portion of the bill equates to a hidden tax. Fire protection is a basic service and it should be included in the tax base.

Beth Young, 2401 Dairy Road, stated that she is surprised that a fire assessment fee would be considered when it received no support from Council or the City Manager at previous budget meetings. Ms. Young stated that police and fire protection are basic services provided by government. Considering the addition of a fee, which is another word for tax, is offensive to the residents of Melbourne. The budget of the average resident in Melbourne is now being stretched to the limit as a result of insurance, taxes and the astronomical rise of gasoline. The residents are cutting back on spending, and cutting back on spending is what is needed for the City.

Ms. Young discussed the cost associated with the Mayor, Council and staff's attendance at the recent Florida League of Cities Conference and the annual membership dues for the League of Cities. She encouraged Council to cut back on unnecessary expenses just like the residents are doing. Ms. Young closed by asking Council to vote against any further study or discussion of fire assessment fees.

Theresa Bryant, 1759 Highland Avenue, said that the proposed fee is the result of the Legislature placing a property tax question on the ballot. She asked what the City will do if the referendum doesn't pass. Her second concern relates to the use of the money. Ms. Bryant asked if the Fire Department was included in the City's budget and whether all the money from this fee would be used for the Fire Department.

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Ms. Bryant informed Council that the County's fire assessment fee for a one-bedroom condominium is \$250. She is concerned that the criteria used in determining the ad valorem tax would not be used in developing this fee. Ms. Bryant remarked that people are on fixed incomes. She asked if the City would return next year with a proposal for a law enforcement fee. She understands that this action simply gives notice; however, she would like to know up front what the rates will be.

Robert Leichtenberg, 882 Wood Creek Drive, stated that he is opposed to the proposed tax increase that the City is calling a fire assessment fee. The Legislature isn't telling government to lower taxes, it is the people. The City's challenge in January should be to downsize and cut expenses, not find new ways to fleece the taxpayers. People are losing their homes, businesses and jobs. And, the only people not in a recession are government workers.

Mr. Leichtenberg discussed the increase in the City's budget from 2000 to 2007. He said that it does not correspond to the increase in population. He warned that people are moving out of the area because they can't afford to live here; the City must figure out how to get by for less; it is time the government cut back and shared the pain with the rest of the citizens; and there is no way the City's budget could increase the way it did without there being some money in the bank.

Donna O'Malley, 471 Mallard Lane, commented that she spoke a few months ago against the budget increase and now Council is looking for ways to extract more money from its citizens rather than making needed cuts. Fire protection is one of the most fundamental services a government provides. The City's budget is more than sufficient to adequately fund our Fire Department without the need for fees. The problem is that the Council apparently deems it more important to fund discretionary items such as lighted City entrance signs, upgraded Airport facilities for tourists that never come and a new City Hall. She summarized and stated that the proposed fire fee is nothing more than a thinly veiled money grab so the Council can continue to fund discretionary budget items.

That concluded comments from the public. Mayor Goode closed the public hearing.

Mrs. Palmer said that providing public safety is a foundational use of the taxpayers' money. Although Council has been told this is not an increase because there would be a corresponding cutback in taxes, she does not believe that would happen. We are in a downturn in the economy and during each campaign, Council Members promised the people we would keep their taxes low and be good stewards of their tax dollars. Fire protection is crucial. She's heard people say that they are willing to pay more for essentials, but the fluff should be cut.

With regard to comments made in the past that people must think this is okay, otherwise the room would be packed, Mrs. Palmer stated that public speaking is one of the top phobias. People expect Council to be their voice.

Moved by Palmer/LaRusso to deny Resolution No. 2066.

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Mr. Thomas said he has not been a fan of this fee; however, he supported it this far to provide flexibility down the road. He added that he believes if the property tax referendum passes in January, residents will feel the pain because services will be reduced. Mr. Thomas stated that Council Members are not fat cats trying to extract money from residents. The intent of this was to do right by the citizens.

Mr. Contreras said his main question from the beginning was the impact. The chart in the agenda package compares the current property taxes with the estimated reduction in property tax if a fire assessment fee were implemented and the associated estimated fire assessment fee for various types of property. There are multiple instances of the fee being higher than the reduction in taxes. He noted that in his case, his costs would go up. Additionally, in his household it was mentioned that the fee is not tax deductible. After reviewing the chart, Mr. Contreras stated that he is not in favor of proceeding.

Mrs. Corby agreed that we are facing serious times; however, she does not want to set the impression that panic is necessary. Property values are coming down; however, from 1997 to 2007 property values went up 179%. Our population increased during the same period 16 – 17%. She said that her question is, “Where is the money?” In the State of Florida 41 out of 412 cities chose to ignore the mandated tax reductions imposed by the Legislature. Melbourne was one of those cities. Again, she will constantly question where the money has gone.

Mr. LaRusso pointed out that he has been consistent on his vote against taxes and fees.

The question was called. Motion carried unanimously.

16. SUBDIVISION VARIANCE (SDV-2007-03) WAL-MART STORE AT SARNO ROAD/WICKHAM ROAD: (Public Hearing) A request for a Subdivision Variance from City Code, Appendix D, Chapter 8, regarding the definition of Subdivision, to allow the sale of a portion of an existing subdivision without having to re-plat. (Owner - Wal-Mart Stores East, LP) (Applicant/Representative - Trisha Rothe, Kimley-Horn & Associates) (P&Z Board - 11/01/07)

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Mrs. Dittmer briefed Council. The following is an excerpt from the agenda report:

This is a request for a subdivision variance to allow a 0.61-acre parcel to be subdivided from Lot 5 (26.25 acres) of "The Plat of Wal-Mart of Melbourne" without the requirement to replat the subdivision. Lot 5 of the subdivision currently contains the Wal-Mart building and the current Murphy Oil gas station. The applicant would like the ability to subdivide the Murphy Oil site into separate ownership from the Wal-Mart lot. The gas station site would only be 26,757 square feet and will require a variance to be approved from the required minimum lot size of 30,000 square feet. Additionally, variances will need to be approved by the Board of Adjustment for the minimum building size and perimeter landscape areas. All cross access easements, stormwater easements, etc., are already in place to allow continued shared use of the driveways, stormwater, etc.

The Planning and Zoning Board voted unanimously to recommend approval of SDV-2007-03 as indicated on the 2-page exhibit, Project Nos. 047260235 (Sheet C1, dated 4/7/05) and 047253901 (Sheet 1 of 1, dated 8/6/07), prepared by Kimley-Horn and Associates, Inc., of Vero Beach, Florida, with a signed and sealed date of 4/7/05 (Sheet C1) and 9/13/07 (Sheet 1 of 1), subject to the following conditions:

- a. No additional access shall be permitted to/from Wickham Road or Sarno Road from any portion of the subdivision.*
- b. Any additional lot splits shall require platting of all of original lots or by seeking a variance as provided for in City Code, Appendix D, Chapter 8, Section 8.8.*
- c. Any future subdividing of this property shall comply with the minimum lot size requirements of the Melbourne Zoning Code, unless the Board of Adjustment grants a variance.*
- d. Any expansion of the existing gas station, including but not limited to buildings, pumps and/or parking, shall require a new conditional use/site plan approval.*
- e. The creation of any public streets, rights-of-way, or other public ways, or public tracts on the property shall require platting of all of these properties before or after development of all or a portion of the properties, and all owners of the parent parcel shall join in with such plat. (This will not apply to the creation of private easements for drainage access or utilities.)*
- f. The applicant must obtain variances from the Board of Adjustment for other non-conformities including, but not limited to, minimum lot size, minimum building size and buffer/landscaping width to adjacent properties.*
- g. Within 30 days of the parcel division, the applicant shall submit amended St. Johns River Water Management permits to the City Engineering department.*

There were no disclosures by Council and no comments during the public hearing.

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Moved by Palmer/LaRusso for approval of Subdivision Variance (SDV-2007-03) based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

17. ORDINANCE NO. 2007-93 (CU-2007-10) AND SITE PLAN APPROVAL (SP-2007-25) STACK CROSSING: (First Reading/Public Hearing) An ordinance granting a conditional use to construct a mini-storage facility on a 5.25±-acre portion of an 8.34±-acre parcel and site plan approval to allow a four-phased commercial site with a 33,222± square foot retail center (two buildings) and a 938-unit mini-storage facility on an 8.34±-acre parcel zoned C-1 (Neighborhood Commercial), located on the northeast corner of Stack Boulevard and Palm Bay Road. (Owner - Palm Bay Venture 1, LLC and Palm Bay SS, LLC) (Representative - Richard Kern, RK Engineering, Inc.) (P&Z Board - 11/01/07)

Attorney Gougelman read the ordinance and Mrs. Dittmer reviewed the agenda report and located the property on the map. The Planning and Zoning Board voted unanimously to recommend approval of the conditional use and approval of the site plan, as depicted on a single-sheet plan prepared by RK Engineering and Associates, Inc., of Melbourne, Florida, with a signed and sealed date of October 10, 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 owner/developer shall not subdivide any part of the land into more than two lots without receiving subdivision approval.
- c. Appropriate environmental permits, including permitting for the gopher tortoises, as applicable, 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. The applicant shall provide a deceleration lane into the project from northernmost curb cut on Stack Boulevard into the gated mini-storage facility.
- f. The applicant shall provide a deceleration lane into the project from Palm Bay Road.
- g. 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 \$26,924.80 for transportation, water and sewer

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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. This 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.

- h. The proposed building shall be substantially consistent with the rendering submitted by the applicant.

Mrs. Dittmer pointed out that the site plan will not become effective until after the second reading of Ordinance No. 2007-93.

There were no disclosures by Council and no comments during the public hearing.

Moved by Thomas/Contreras for approval of Ordinance No. 2007-93 subject to the findings outlined in the Planning and Zoning Board memorandum and the staff condition. Motion carried unanimously.

Moved by Palmer/Thomas for approval of SP-2007-25, subject to the findings and conditions outlined in the Planning and Zoning Board memorandum. Motion carried unanimously.

- 18. COUNCIL ACTION RE: Lease agreement for the Pineapple House parking lot.
 - a. Approval of a Lease Agreement between the City of Melbourne and Pineapple House of Brevard, Inc. for property located at 1434 Pineapple Avenue to be used for public parking in the Eau Gallie Redevelopment area for a period of two years from December 1, 2007 through November 30, 2009 at an annual cost of \$10 plus taxes in the approximate amount of \$4,500; and authorization for the City Manager to execute the agreement.

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

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

- b. Approval of a Lease Agreement between the City of Melbourne and Pineapple House of Brevard, Inc. for property located at 1434 Pineapple Avenue to be used for public parking in the Eau Gallie Redevelopment area for a period of two years from December 1, 2007 through November 30, 2009 at an annual cost of \$10 plus taxes in the approximate amount of \$4,500; and authorization for the City Manager to execute the agreement.

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

Moved by LaRusso/Contreras to convene as the Melbourne Downtown Community Redevelopment Agency for the following items. Motion carried unanimously.

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19. COUNCIL ACTION RE: Approval of a Grant Funding Agreement between the Melbourne Downtown Community Redevelopment Agency and Melbourne Main Street, Inc. for funding support in the amount of \$55,000 for the fiscal year ending September 30, 2008.

Moved by Meehan/Thomas for approval of a Grant Funding Agreement in the amount of \$55,000 with Melbourne Main Street, Inc. Motion carried. Mrs. Palmer voted nay.

20. COUNCIL ACTION RE: First Amendment to the Developer's Agreement for the South Crane Creek Mixed Use Project.

- a. Approval of the First Amendment to the Developer's Agreement between Hynes Properties, LLC, Towne Hynes of Crane Creek LLC, the Downtown Melbourne Community Redevelopment Agency, and the City of Melbourne for the South Crane Creek Mixed Use Project.

Excerpt from the agenda report: *In 2006, the City Council and the City Council sitting as the Governing Board of the Downtown Melbourne Community Redevelopment Agency approved a Developers Agreement for the South Crane Creek mixed use project. This amendment increases the scope and construction schedule of Phase One of the project and acknowledges/approves the new developer.*

The amendment approves the following:

- *Making the first phase three floors of parking, as opposed to one floor.*
- *Making the first phase three floors of medical and professional office development rather than two floors.*
- *Including a therapy spa, small auditorium, and employee cafe on the three floors of medical/professional office space development.*
- *Changing the build-out date for the project from June 1, 2008 to January 1, 2009.*
- *Changing the owner/developer for the east parcel of the project from Hynes Properties, LLC, a Florida Limited Liability Company, consisting of Dr. and Mrs. Hynes to Towne Hynes of Crane Creek LLC, a Florida Limited Liability Company (partnership of Towne Realty, Inc., of Milwaukee, Wisconsin, and Dr. and Mrs. Hynes).*

Mayor Goode opened the public hearing. Ken Ward, representing Towne Hynes, was present and available for questions.

Moved by Meehan/Thomas for approval of the First Amendment to the Developer's Agreement between Hynes Properties, LLC, Towne Hynes of Crane Creek LLC, the Downtown Melbourne Community Redevelopment Agency, and the City of Melbourne for the South Crane Creek Mixed Use Project.

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Mrs. Palmer asked what kind of changes will occur with the impact fees as a result of changing the build out date.

The City Manager replied that the applicants are moving some of Phase 2 into Phase 1. They understand they are responsible for all commensurate fees relating to square footage, capacity, etc. The applicants opted to move some of the phasing ahead of time. The City Manager added that he doesn't believe they are getting the benefit of any reduction as a result of change in phasing.

Mrs. Palmer said it was her understanding that the impact fees were based on when they started the building and when they finished. And, after a certain date, the impact fees would increase. The City Manager replied that part of that is correct; however, the impact fees were triggered by the applicant bringing into play an active building permit.

The question was called. Motion carried unanimously.

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

- b. Approval of the First Amendment to the Developer's Agreement between Hynes Properties, LLC, Towne Hynes of Crane Creek LLC, the Downtown Melbourne Community Redevelopment Agency, and the City of Melbourne for the South Crane Creek Mixed Use Project.

Moved by Meehan/LaRusso for approval of the First Amendment to the Developer's Agreement between Hynes Properties, LLC, Towne Hynes of Crane Creek LLC, the Downtown Melbourne Community Redevelopment Agency, and the City of Melbourne for the South Crane Creek Mixed Use Project. Motion carried unanimously.

21. COUNCIL ACTION RE: (Public Hearing) Approval of an Interlocal Agreement between the City of Melbourne and Capital Projects Finance Authority for the Century Oaks Adult Care Living Facility Bond Issue; and authorization for the City Manager to execute the agreement.

The City Attorney provided the City Clerk with a copy of the newspaper public hearing notice. Additionally, he provided an overview of this item. The following is an excerpt from the report:

Family Extended Care of Melbourne, Inc., operates an Adult Living Facility on Stack Boulevard, known as Century Oaks. The facility currently houses 153 senior citizen residents and has 39 employees.

Family Extended Care of Melbourne, Inc., a Florida Corporation, and its parent company are proposing to borrow up to \$14,000,000. Eleven million dollars will be used to refinance two taxable bank loans, which will save approximately \$50,000 per year in debt service costs. The savings will be used for additional services and for renewal and

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replacement costs. The remaining money may be used for construction of an additional 16 affordable, efficiency units.

The money will be raised through tax-free bonds to be issued by the Capital Projects Finance Authority, which is a public entity. To finance a project in Melbourne the bond issuer will need authority through an Interlocal Agreement with the City of Melbourne. The City's bond counsel has reviewed the agreement and this transaction, and they find the transaction is in accordance with Florida law.

The Interlocal Agreement provides that the City is not endorsing the creditworthiness of the bond issuer or the financial viability of the project; that neither the City of Melbourne nor its officials shall have any liability under the bonds issued or by virtue of entering into the Interlocal Agreement; and that the Capital Project Finance Authority agrees to indemnify the City of Melbourne.

Mayor Goode stated that he understands that Melbourne will not be obligated; however, they plan to spend only \$3 million in Melbourne. He asked why Melbourne is getting involved.

Attorney Gougelman said that the applicant can describe why; however, it is his understanding that all of the money will be spent in Melbourne. Also, they intend to retire some existing debt.

Mayor Goode opened the public hearing.

William Zvara, bond counsel for Capital Projects Finance Authority, said that in order for his client to issue bonds, they need the City's permission by interlocal agreement. He noted that his client is a financing authority that operates throughout the State of Florida. They plan to consolidate four facilities under one financing, and one of the facilities is located in Melbourne. The bond issue will lower their debt costs and will be a benefit to the community. Mr. Zvara emphasized that there is not cost to the City. He informed Council that Family Extended Care paid the cost for the City's outside bond counsel to review this proposal.

In response to Mr. LaRusso, Mr. Zvara listed the location of the other facilities and confirmed that they have interlocal agreements with those jurisdictions.

The City Manager stated that the City required the applicant to pay for our bond counsel to review this issue. He added that we have a clean opinion from a third party who works for us on this issue.

The Mayor said that the following representatives of the applicant are present and available for questions: James Swan, Bergen Capital, New Jersey; Roy Lustig, Family Extended Care of Melbourne, Stack Boulevard; and Joe Aniello, Family Extended Care of Melbourne Stack Boulevard.

The Mayor closed public hearing.

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Moved by Thomas/Meehan for approval of the Interlocal Agreement between the City of Melbourne and Capital Projects Finance Authority for the Century Oaks Adult Care Living Facility Bond Issue; and authorization for the City Manager to execute the agreement. Motion carried. Mayor Goode voted nay.

22. COUNCIL ACTION RE: Approval of an Interlocal Settlement Agreement between the City of Melbourne, the City of West Melbourne (Hessee property), Echo Trading Company LLC, and Floridana Incorporated.

Mr. Ralls reviewed the item. He noted that it is his understanding Mr. Hessee has agreed to the terms. The following is an excerpt from the agenda report:

This is the proposed Interlocal Settlement Agreement between the City of Melbourne, the City of West Melbourne, and Echo Trading Co., LLC, owner of the property on which the Brookfield ALF was to be developed.

The need for this settlement agreement arose out of West Melbourne's annexation of a 17.2-acre parcel on which Melbourne already had a Utility and Annexation Agreement. Melbourne filed a suit against West Melbourne.

Conflict resolution procedures in the Florida Statutes apply when one governmental entity files suit against another governmental entity. The first step was the meeting between the staff of the two cities. The issue was not resolved. The second step was the joint public meeting on July 25 at which the Councils of both cities addressed the issues. A compromise arrangement was agreed upon.

Attorneys for both cities worked on an agreement that reflected the compromise arrangement agreed upon. However, in early October, the owner/developer Craig Hessee informed Melbourne staff that he had a contract to sell the property to a developer who planned to build a multi-family complex. This required significant revisions to the draft agreement, which have been completed.

Key points of the agreement:

- *Melbourne will withdraw its objection to the annexation by West Melbourne.*
- *Melbourne will be the retail water and sewer service provider to the property.*
- *The property owner will be responsible for off-site water and sewer lines needed to serve the property, and will convey those utility lines to Melbourne.*
- *On-site water and sewer systems will be owned, operated, and maintained by the owner.*
- *Melbourne will not object to West Melbourne's annexation of the Coastal Commerce property or West Melbourne's construction of a looped water line to serve it.*
- *Melbourne will promptly process a water concurrency request for the Coastal Commerce property.*

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This agreement was approved on November 8, 2007 by the West Melbourne City Council.

Mr. Ralls confirmed for Mrs. Corby that this agreement provides for the terms that both Councils agreed to during the July 25 conflict resolution meeting. Mrs. Corby asked Mr. Ralls to identify the difference.

Mr. Ralls explained that the only difference is that the Craig Hessee property was originally planned as a single-family residential subdivision. It is now being proposed as a multi-family apartment complex. In subdivisions, the City of Melbourne assumes ownership of the water and sewer lines and lift stations on property dedicated to the City. The City does not typically take ownership of water and sewer lines in a private apartment complex.

The City Manager added that staff believes the agreement is consistent with the underlying ideas of the agreement but recognizes the change in proposed use consistent with our Code.

Moved by Palmer/Contreras for approval of the Interlocal Settlement Agreement between the City of Melbourne, the City of West Melbourne (Hessee Property), and Echo Trading Co., LLC. Motion carried unanimously.

23. COUNCIL DISCUSSION RE: Professional consulting services to pursue certification by the U.S. Green Building Council through its Leadership in Energy and Environmental Design program for City Hall.

The City Manager stated that unless there is objection, staff requests that this item be withdrawn. Without objection, the item was withdrawn (reference agenda Item #14 "j").

24. COUNCIL DISCUSSION RE: Initiation of negotiations for a new agreement for the sale and purchase of water between the City of Melbourne and the City of West Melbourne. (Requested by Council Member John Thomas)

Mr. Thomas said that he believes the current agreement is outdated and does not adequately address issues for the two cities. It doesn't take into account growth and doesn't lay the groundwork on how to proceed in the future. Staff was not successful last year in its attempt to negotiate a new agreement with West Melbourne. West Melbourne has new Council Members on board. He and West Melbourne Council Member Bill Mettrick have been speaking. Mr. Mettrick took this item before the West Melbourne City Council last week and they unanimously approved it. Additionally, West Melbourne is considering annexing a huge parcel of land and it would be in Melbourne's best interest to have an agreement that puts us in a better position.

Mr. Schluckebier said that our special counsel, Tom Cloud, is ready to provide a summary. He noted that staff met with West Melbourne staff today and negotiating a new agreement would add impetus to those meetings.

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Mayor Goode said the last he heard, Melbourne was going to retail all the water and sewer on the other side of I-95. In the meantime, there have been changes. And, if that is the case, he is going to propose that we bow out of the contract altogether. The current agreement contains a five-year clause. Melbourne should give notice and let them find their own sources of water. If West Melbourne annexes the five or six additional sections of land, they are going to have more square miles of property than the City of Melbourne. Mayor Goode stated that he doesn't believe Melbourne should be encumbered with all of the regulatory processes, building new water plants, and issuing debt. It's time we fold our tent and come back in and take care of Melbourne.

Mr. Contreras asked the City Attorney if negotiating a new contract would require special counsel. Attorney Gougelman recommended that Mr. Cloud proceed with his presentation. He added that Mr. Cloud has a significant background in water and sewer work.

Following brief discussion, Mrs. Palmer commented that Council is deciding whether or not to negotiate a new agreement. Council is not deciding what that agreement will be.

Mr. LaRusso asked if the City is budgeted for this renegotiation. Attorney Gougelman replied not really.

Mr. Schluckebier added that we do budget for legal and other type issues in the Public Works/Utilities budget and the City Attorney budget. Staff believes the current efforts are well within those parameters. However, if Council decides to undertake litigation and go right to circuit court, we need to have a different conversation.

Council discussed the previous effort to negotiate a contract, the benefits of negotiating a new contract, West Melbourne's proposal to annex large tracts of land, and Melbourne's obligation to pay the water and sewer bonds for plant improvements.

Mrs. Corby pointed out that Melbourne signed an agreement with West Melbourne and that agreement was renewed without amendments. This effort would provide an opportunity to decide where we want to go. She recalled the strategic planning meeting and stated that roads and water were selected as the top priorities in the City. The City can meet with West Melbourne and work through these loopholes and change the way the agreement is written. If there is future development, future growth, and planning, the onus should be on West Melbourne to provide that information to Melbourne. They have to provide a strategic plan, and there is no harm in sitting at the table and talking.

Mr. LaRusso said he believes it is an assumption that West Melbourne will come to the table as aggressively and amicably as Melbourne. That has not proven true in the past.

Mrs. Palmer recommended Mr. Cloud shed light on this issue.

Tom Cloud, City's special counsel with the firm of Gray Robinson, provided the following background information on this issue:

- Eau Gallie was the originator of the bulk deal with West Melbourne. In 1968 they sold

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water to West Melbourne and that was the original agreement. When Melbourne and Eau Gallie merged in 1969 the new City of Melbourne inherited the 1968 deal. The deal was rewritten in 1978 with some minor changes. The current agreement is close to 30 years old.

- The 1978 agreement has interesting language that some people prefer to ignore. People who were part of the original deal have said that the notion was that the obligation to provide water was tied to the city limits of West Melbourne as of a specific date – July 1, 1978. The 1978 agreement provides that West Melbourne agrees and covenants that it will sell water only to those consumers residing or located within the city limits of West Melbourne and under no circumstances would it sell water to consumers that reside or are located outside the city limits. The agreement was never intended as a lever for West Melbourne to annex the universe.
- The 1986 amendment dealt with what happens outside the West Melbourne and Melbourne city limits. It provides that Melbourne gets first option and that has not changed. There were instances where Melbourne did not exercise its first option and allowed West Melbourne to annex property. However, there was a problem in that Melbourne was not being paid nearly enough in capital charges for the capacity. That was addressed in the 1997 agreement, which provided for payment of those capital charges and an orderly process for making payments. That agreement has a clause that says the parties will take whatever other actions are necessary, including the adoption of ordinances, to implement the agreement. The first thing that West Melbourne did was change their Land Development Code and instruct developers to go to Melbourne for water concurrency.
- In 1997 there were checks in place to make sure Melbourne had adequate water capacity and pressure in its system and that Melbourne was being paid properly for the capacity that was fueling growth in West Melbourne. For 30 years the Department of Environmental Protection required that Melbourne sign off on the DEP permits. In the 1997 agreement, West Melbourne agreed that all water concurrency had to be run through Melbourne; that has been going on for 10 years.
- West Melbourne put a provision in its Comprehensive Plan in 1997, which is a contemporaneous statement of what West Melbourne believed the intent of the water agreement was. The provision says that presently the geographic service area for potable water facilities in West Melbourne is primarily the existing city limits as shown on the map entitled potable water service area. Through the current agreement with Melbourne dated July 1, 1978, West Melbourne is limited to a service area designated as the city limits. In their own words, West Melbourne stated that they are limited to their city limits.
- By virtue of the amendment dated November 3, 1986, both parties agreed that West Melbourne could service areas outside of its present city limits. However, Melbourne would have the first option and West Melbourne would serve such customers only when Melbourne has first determined that it cannot or does not wish to provide such service.

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By virtue of the agreement dated February 4, 1997, West Melbourne has the ability to service this type of area either by expansion of existing water mains or by placement of a new master meter. In other words, Melbourne is not obliged to put in a master meter under any conditions. And, we now have 12 master meters, which is an incredibly large number for a bulk agreement.

- In their own words, West Melbourne articulated for the last 10 years what they believe the contract to be. It's tied to their city limits and it's not an open checkbook for them to get all the water they want and to annex the universe. That has never been the deal and that is not the deal today. This is relevant because about a year ago Melbourne sought to share annexation opportunities at U. S. 192 and I-95 through a process authorized by the State Legislature. Melbourne got stonewalled on that request and a request to modify the agreement. The 1997 agreement provided that Melbourne waived its right to beg off on the contract if a new agreement was not negotiated by July 1, 1999. That never happened, although it should have happened. Melbourne asked again last year to negotiate, and that didn't happen.
- There was a demand for water for projects that were partly in the West Melbourne city limits and partly outside the West Melbourne city limits. To Melbourne's credit, we went forward with an interim agreement and provided water to those properties. This benefits our position because not once in the last 15 months has Melbourne denied water service. We have continued to go above and beyond our duty called for under the contract. Melbourne had contract rights with a property owner and there is no question those rights were interfered with. As a basis for settlement of that issue in July, West Melbourne demanded more territory outside of its city limits for service. Again, Melbourne turned the other cheek and adopted that agreement (on this agenda).
- After the joint meeting, West Melbourne sent a letter to DEP indicating that they have an agreement that says Melbourne is going to provide all their water needs through 2028. The letter was written to FDEP by a lawyer representing West Melbourne who just finished a stint on the FDEP rule making board. The letter further requests that Melbourne's ability to sign off on DEP permits be removed. The local district manager for FDEP said, "You bet." Normally it takes months to get a decision like that out of DEP, yet six days after the letter was written from West Melbourne, the new pronouncement came out and a 30 year policy was reversed by a single individual at DEP in Orlando. Melbourne was never included in the discussion.
- West Melbourne sent a communication to the Department of Community Affairs saying that they don't really need Melbourne to sign off on concurrency because of the agreement. West Melbourne has provoked the departure from DEP policy and they've sent information to DCA, which is at variance with their Comprehensive Plan. West Melbourne had the audacity to accuse Melbourne of dragging its feet.
- Despite these unilateral acts that were going on, staff made a decision to proceed with the agreement. Because of the joint meeting in July, we felt it was the right thing to do; however, we are now past that. We have approved the settlement agreement and

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we've got some options. Melbourne could do nothing and let the whole process continue, work out an amendment that is fair to both cities, or sue for breach if we can't get an acceptable protocol. West Melbourne's unilateral acts breach the 1978 agreement and the 1997 agreement. Although it is not being recommended at this point, there is the option of sending the five-year notice.

- Melbourne needs to put these agencies on notice that we are not the water guarantor for West Melbourne. Legislative acts that have occurred in the last three years have been aimed at linking water policy to planning. There is nothing in these agreements that says the City should be funding annexations in another city. If this were explained to the State, the State is liable to say that the Comprehensive Plan amendments that follow on to such annexations are not appropriate because the water supply is not there.

Mr. Cloud concluded by saying that there is a need to amend the agreement; that is the advice being given.

Mr. LaRusso said we are coming dangerously close to the edge that could lead to litigation. He asked if it would be in our best interest to go into a shade meeting. Attorney Gougelman replied that is premature and Mr. Cloud added that we can't go into a shade meeting until litigation has been declared.

Mayor Goode referenced the letter sent to DEP and the past positions held by the attorney who wrote that letter. The Mayor stated that he feels the local director of the DEP was intimidated.

The City Manager said that Melbourne picked up the phone two weeks ago, which is why a meeting was held today. We believe that their proposed changes to the Comprehensive Plan are inconsistent with our practice, our agreement and our protocols.

Mr. Cloud added that we asked West Melbourne to hold up on those changes, which they ignored. We did get them to say they would not take final action on changing their Land Development Code, but Mr. Reynal's position in the meeting today is that they are not going to hold back on the public hearings. They are going to proceed and then hold off on final action, whatever that means.

Mayor Goode asked what would happen if he made a motion to put the five-year rule into effect and inform West Melbourne that Melbourne would cease providing water in five years. He added that he does not believe this Council should obligate the people of Melbourne with the expense of paying the bonds.

Mr. Cloud replied that he does not know what they would do. He outlined options that may exist.

Mr. Thomas stated that discussions about changing their Comprehensive Plan sparked him to talk to West Melbourne Council Member Bill Mettrick. Mr. Thomas said that if we negotiate a new agreement, everything is on the table. If it doesn't work, obviously we can give five-year notice. We have nothing to lose by talking.

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Mr. Cloud agreed but cautioned that it can't continue to be lopsided. It is one thing when you are dealing with a couple hundred acres, but it's another when you are dealing with huge tracts of land. Melbourne will be the one financing the infrastructure.

Mr. Thomas referenced his memorandum in the package dated November 15 that articulates certain dates. He said this will hopefully inspire both staffs to work together and if it doesn't work by a certain date, the two Councils will get together.

Mr. Thomas made a motion for the City of Melbourne to negotiate a new agreement for the sale and purchase of water with the City of West Melbourne, taking into account the target dates: Negotiations will begin no later than February 1, 2008 and would include each city's respective City Manager, City Attorney and appropriate staff; staff would be directed to meet a minimum of once a month between February 1, 2008 and April 28, 2008; if an agreement is not reached and approved by each city's respective Council by May 20, 2008, each Council would agree to a joint meeting not later than June 30, 2008 to assist in resolving any outstanding issues.

The City Manager asked Mr. Thomas to consider an amendment to request that West Melbourne not take further action on their Comprehensive Plan and Land Development Regulations.

Mr. Thomas agreed to include that in his motion.

At this point, Mrs. Palmer seconded the motion.

Mrs. Palmer asked the possibility of reversing what DEP has done unilaterally with West Melbourne. Mr. Schluckebier replied that we are formulating actions, which we would rather not go on record with. Mrs. Palmer asked how we can have amicable meetings with those actions pending.

Attorney Gougelman discussed his concerns with West Melbourne proceeding with a Comprehensive Plan amendment and amendments to their Land Development Regulations.

Mrs. Corby asked if Council could receive a copy of the letter from FDEP and the City Manager replied absolutely. Mr. Cloud added that Council needs to see the letter that was sent and the letter that came in reply.

Mrs. Corby referenced the schedule outlined in the motion and asked if it is too far out. She asked if we should move the dates up.

A brief discussion followed about when a shade meeting could be held.

Mr. Thomas referenced the target dates and said there is nothing that precludes the negotiations from finishing by March 1. The dates just set a parameter so the negotiations can't continue beyond that time.

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Mr. Contreras asked if we need a date certain by which West Melbourne will reply as to whether they intend to put their amendments on hold. If their reply is that they intend to proceed, then it will be a different ball game. He added that this Council has been more than amenable in wanting to be good neighbors. However, he is concerned about not including a date certain for a response.

Discussion followed regarding a date certain. Mr. Cloud recommended that Council hold off on a date for now, because it starts to sound like an ultimatum. He added that he and staff will alert Council if things are going off track.

Mayor Goode stated that it looks like this issue is already in the ditch.

Mr. Contreras agreed and pointed out that Melbourne continues to look the other way. We have a fiduciary responsibility for a multi-million dollar water facility and we can't continue looking the other way and have the City of Melbourne taxpayers wonder why they are getting another rate increase; footing the expansion of another city is incredibly irresponsible.

Mrs. Palmer expressed concern with Council Members, who are less informed, reaching the point of negotiating the agreement. The City Manager recommended that if we don't have some kind of substantial modification to our existing agreement by February 15 and West Melbourne continues processing their amendments, that a joint meeting be requested.

Mr. Contreras said we continue to watch another city continue to go counter to what's currently in the contract. We have been above board and have fashioned our discussions and negotiations in good faith, but in a surreptitious manner, another activity is going on that is running absolutely contrary to the good guys. This is very perplexing. Mr. Contreras repeated that is why he feels May is too late.

Mr. LaRusso agreed that we need a date certain. He added that we have the five-year plan in our hip pocket if we need it.

Mayor Goode recommended that they be given 45 days.

Mr. Contreras asked for the attorney to provide a rationale of not providing a date certain.

Attorney Gougelman pointed out that the composition of the West Melbourne City Council has changed significantly. Mr. Thomas has provided his insight on his feelings about the authenticity of where the elected officials in that community want to go and that provides great hope. Additionally, no elected official likes to be served up with an ultimatum. It's like waving a red flag in front of a bull. Attorney Gougelman urged the greatest amount of respect be shown for the West Melbourne City Council. Until recently, the cities have had an incredibly close relationship. Finally, we will know very quickly whether they will accede to our request that they not pursue these types of amendments.

Discussion continued with regard to establishing a response date. Mr. Thomas pointed out

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that the West Melbourne City Council voted on the November 15 memorandum as presented. They have agreed to that and now we are considering changing the playing field.

The City Manager offered an alternative that staff return on the first agenda in January with a briefing.

Mr. LaRusso pointed out that it's not a deal until both parties agree. Mr. Contreras said he respects West Melbourne's new members; however, based on our staff's recommendation, it appears as if the dates are too far out. Mr. Cloud pointed out that the dates aren't too far out if West Melbourne holds up on adopting policy changes.

Mayor Goode pointed out that once their Comprehensive Plan is approved by the Department of Community Affairs, there is nothing the City can do. Mr. Thomas replied that if they do that, we would stop the negotiations and be done.

Discussion continued about establishing a date certain for a response.

Attorney Gougelman recommended that Council stay with Mr. Thomas's proposal. It has been signed off by West Melbourne. We are also going to ask them respectfully to lay off their amendments to the Comprehensive Plan and Land Development Regulations. The City Council will be receiving regular reports from staff. If staff starts to sense that things are starting to slip, that will be presented to Council. At that point, it doesn't stop Council from taking whatever action it thinks is appropriate.

Mr. Thomas replied that he likes that viewpoint. The Mayor said he does not and he has just been talked out of voting for this. He added that he believes in negotiations; however, West Melbourne is laughing at us at this moment. The negotiations are a delaying tactic. Mr. Schluckebier pointed out that West Melbourne is going to show us quickly what the resolve is all about.

The question was called. Motion carried. Mayor Goode voted nay.

Recessed: 10:39 p.m.
Reconvened: 10:42 p.m.

25. COUNCIL ACTION RE: Employee Survey

Prior to recess, Mayor Goode said that due to the hour, he would like to accept the report and then postpone action until January.

Moved by Goode/Corby to accept the Employee Survey Report and postpone approval of the action plan until the January 8, 2008 meeting. Motion carried unanimously.

26. COUNCIL ACTION RE: Board Appointments

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- a. Appointment of two alternate members to the Building Board of Adjustment and Appeals.

Moved by Palmer/Contreras to reappoint Leon Leash and Paul Kreul. Motion carried unanimously. (12/14/2007 – 12/13/2009)

- b. Appointment of one member to the Library Board.

Mrs. Palmer nominated Janet Sullivan. There were no other nominations. Moved by Palmer/Thomas to reappoint Janet Sullivan. Motion carried unanimously. (12/3/2007 – 12/2/2012)

- c. Appointment of two regular members and two alternate members to the Zoning Board of Adjustment.

Mayor Goode called for nominations for Chip Allen's seat. The Mayor nominated John Workman. Mrs. Palmer asked about Chip Allen. Mayor Goode referenced the information in the agenda package and said he believes it is time we select a new person. Mr. Workman is an alternate member on the board and it is a logical progression.

Mayor Goode declared John Workman appointed by unanimous acclamation. Without objection, John Workman was appointed. (12/3/2007 – 12/2/2010)

Moved by Goode/Meehan to reappoint Brenda Burgener. Motion carried unanimously. (12/3/2007 – 12/2/2010)

Moved by Contreras/Goode to reappoint James Taylor. Motion carried unanimously. (12/27/2007 – 12/26/2010)

Mayor Goode called for nominations for the vacant alternate member seat (created when Mr. Workman was appointed as a regular member). Mr. Contreras nominated Ricardo Rangel. Moved by Contreras/Meehan to close the nominations. Motion carried unanimously. Moved by Goode/Contreras to appoint Ricardo Rangel. Motion carried unanimously. (12/3/2007 – 12/26/2010, unexpired term plus full term)

27. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole, 805 East Palmetto Avenue, referenced the discussion during the last meeting about the Melbourne Auditorium. She informed Council that an engineering report on the condition of the roof was previously prepared.

Mrs. Palmer noted that she missed the last Council meeting; however, she watched the DVD. Regarding the new policy adopted (about Council Members being the lead in their own district on issues), she stated that Council is elected at large. Because of that, members represent all of the citizens. Members are elected from districts because

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someone who lives in a district has a better day to day understanding. It's a matter of accessibility, and there is an expectation of fair distribution of City resources.

Continuing, Mrs. Palmer said when a citizen calls her about a problem, she contacts the City Manager or appropriate City Department and plugs the citizen in to assistance. But, when someone calls her on an issue that Council is preparing to vote on, at the end of the conversation she informs the caller that she has only vote. The caller is instructed to contact each member of Council.

Mrs. Palmer asked Council to repeal the new policy. She said she believes Mr. Contreras was asking for professional courtesy; however, the discussion got out of hand and has resulted in an injustice to the citizens in our City. She added that she is not sure that policy is in line with our Charter. She concluded by saying she will not abide by that policy.

Mr. LaRusso said he was prepared to discuss this issue. He referenced the Council district map on the overhead and pointed out that his district touches all other districts. He would like to review and polish the action taken by Council and bring this back as a discussion item.

Moved by Palmer/Corby to drop that policy (Policy #53).

Mrs. Meehan said she thinks the policy needs to be redefined and she supports a discussion item on this issue.

Mr. LaRusso asked if the current policy is enforceable. Mayor Goode replied no and Attorney Gougelman said that, although he has read the new policy several times, he doesn't know what it says.

The question was called on the motion to repeal Policy #53. Motion carried. Mrs. Meehan voted nay.

Mr. LaRusso asked that this return on the January 8, 2008 agenda as a discussion item.

28. ADJOURNMENT

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

The meeting adjourned at 10:59 p.m.



City Clerk – 12/6/2007

Approved by Council: _____

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