

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
DECEMBER 11, 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. Pastor Tony Hauck, Church on the Rock, 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 presented the Beautification and Environmental Advisory Committee “We Noticed” Award to The Pineapple House, 1437 Pineapple Avenue, for landscaping and lighting. Dude Braselton, Vice President, The Pineapple House accepted the award.

5. Approval of Minutes - November 27, 2007 Regular Meeting

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

6. City Manager’s Report

City Manager Jack Schluckebier referenced the item that indicates “staff has proposed several dates for a budget workshop with the City Council to review the economic situation in preparation for development of the 2008-2009 budget.”

Moved by LaRusso/Contreras to conduct the budget workshop meeting on February 28, 2008. Motion carried unanimously.

Council Member Mark LaRusso commended the City Manager, Deputy City Manager, Director of Finance and others involved in making the decision to withdraw the City’s

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funds from the State Board of Administration before withdrawals were frozen. He thanked staff for its diligence and outstanding job in protecting the City's assets.

7. Public Comments

None.

UNFINISHED BUSINESS

8. SITE PLAN APPROVAL (SP-2007-17) PARKWAY COMMONS RETAIL CENTER, PHASE 1: A request for site plan approval to allow the development of Phase 1 of a retail commercial project with 54,000± square feet on an 18.88±-acre portion of a 30.74±-acre parcel zoned C-1 (Neighborhood Commercial), C-P (Commercial Parkway), and R-2 (One-, Two-, and Multiple-Family Medium Density Residential), located west of Wickham Road, north Parkway Drive, and south of Grand Meadows Boulevard. (Owner - Wickham Corporate LLC/Lake Washington Station/Park Place II, PSP) (Applicant - Forte Macaulay Development Consultants) (Representative - Ryan Rusnak) (Postponed - 11/27/07)

From the agenda report: *Council postponed this item at the November 27, 2007 meeting to allow time for the applicant and the neighbors to meet.*

The Planning and Zoning Board voted five to two to recommend approval of the 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 with the following conditions:

- a. *Any change to the site plan will require reevaluation by the City 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.*

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- 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. Consistent with City Code, 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.*
- 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).*

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- 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 the City Council development order. The development order shall not become effective until payment of the capacity reservation fee has been made payable to and received by the City of Melbourne.*

Note: In addition to the correspondence in the agenda package, City Council received the following: Letter dated December 10, 2007 from Ryan Rusnak, Forte Macaulay Development Consultants, summarizing a meeting held with the Parkway Meadows Homeowners' Association on November 29.

Mayor Goode stated that citizens have signed up to speak; however, the public hearing has been held on this item. He informed the audience that Council Member Contreras postponed this item to allow the developer time to meet with area residents.

Council Member Richard Contreras made the following disclosures: 1) On November 27 he received an e-mail from Carmen Glasser concerning this project. 2) On November 28 he spoke with Mr. Mirabito, President of the Parkway Meadows Homeowners' Association. Mr. Mirabito expressed appreciation for the opportunity to meet with Mr. Rusnak. 3) He received a letter from Mr. Mark Soliman dated November 28 concerning drainage and traffic. 4) On November 30 he spoke with Carmen Glasser about the project, which was in response to her November 27 e-mail. Ms. Glasser stated that they had met with Mr. Rusnak and Mr. Nickle (Bussen-Mayer Engineering) at Brevard Community College on November 29. 5) On December 11 he spoke with Mr. Rusnak who stated that a meeting had been held with the Parkway Meadows Homeowners' Association and other interested residents. They discussed drainage, traffic, parking, etc. Although they are early in the development process with the particulars, Parkway Meadows residents want to be involved with the developer as the plans evolve. In the spirit of cooperation, the developer has agreed to keep the residents informed and involved in the site surveying process, in which drainage is a central issue.

Mr. Contreras referenced the public sign-in sheets. Mayor Goode repeated that the public hearing was held at the last meeting and Council decided to postpone this and not continue the public hearing. Mr. Contreras said that based on the meeting held between the developer and the residents, the parties appear to be amicable in terms of going forward. He informed Council that he hasn't received calls from anyone in the subdivision since the residents have been involved with the developer.

Council Member Joanne Corby disclosed that Evan Silbigger called and expressed support for the project. Also, he asked whether he would be able to speak at this meeting.

Mrs. Corby commented that folks who have signed up should be able to speak to Council. Mayor Goode said at the last meeting when Council agreed to postpone this

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item, the public hearing was held/closed and discussion was brought back to the table. A brief discussion continued.

Moved by Corby/Palmer to allow anyone to speak who has completed a sign in form.
The roll call vote was:

Aye: Contreras, LaRusso, Thomas, Palmer and Corby

Nay: Meehan and Goode

Motion carried.

Mayor Goode opened the public hearing.

Ryan Rusnak, 1682 West Hibiscus Boulevard, representing the applicant, reported that at the direction of the City Council they met with the residents. The meeting was productive. He stressed that they are in the preliminary stages; however, he has committed to meeting with the residents and keeping them involved throughout the process. He added that they plan to seek their St. Johns River Water Management District permit immediately. That permit will establish the framework for how the site will drain.

Cathy Jones, 3453 Saddle Brook Drive, said that during the meeting with the residents, the developer provided a better explanation of the proposed project. He agreed to work with the residents on the location/type of landscaping along the common property and the location/design of the wall. Ms. Jones said that the residents agree on the following: traffic signal on Wickham Road at the entrance/exit of Parkway Commons across from the Senior Center; additional parking spaces; and the location of the dumpster and the loading dock behind the 26,000 s.f. building.

Continuing, Ms. Jones reported that there are other items they do not agree upon. The residents would like to request a lone entrance/exit for the commercial property onto Parkway Drive to decrease the number of conflict points. There are currently six entrance/exits onto Parkway Drive from their development. The addition of two more will lead to confusion and traffic accidents. They would like the approval process to include a right turn lane from Parkway Drive to Wickham Road. The residents have asked the developer to move the retention pond farther from their homes; however, they were told that this is where it will be located. The residents are concerned about their homes and that is why they would prefer the maximum distance be provided to allow room for drainage or in the event the integrity of the berm is compromised.

Ms. Jones referenced previous drainage problems in her subdivision and stated that the residents are not against the development of commercial property as long as it does not negatively impact their development or the environment. The destruction of wetlands could potentially lead to flooding issues and improper drainage on surrounding areas. She asked the City Council to consider the residents and their quality of life when making its decision.

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Carmen Glasser, 3217 Parkplace Court, expressed appreciation for the opportunity to meet with the developer. She stated that it was very informative for the residents.

Mark Soliman, 1924 Theys Drive, said he heard the applicant's attorney previously mention that they would accept historical flow patterns. He asked who would be responsible if historical flow is diverted around the system.

Mayor Goode replied that the SJRWMD will set the flow levels. If there is a problem, St. Johns will provide direction. Mr. Soliman said he is specifically referencing flow coming from the Crossings property and the Parkway Meadows property. He commented that the SJRWMD does not regulate upland diversion. Mayor Goode disagreed. Discussion continued.

City Engineer Jenni Lamb pointed out condition "e", which relates to historic drainage patterns. Regarding the specific question, the developer will maintain water flowing over the developer's property. His design has to account for the proper flow across his property, which includes previous conditions.

Mrs. Palmer asked about enforcement if there is a problem. Mrs. Lamb replied that the City and the SJRWMD have enforcement power. Additionally, this development will be required to enter into a stormwater maintenance agreement. Under that agreement if the developer is not properly maintaining the system, the City will have the ability to maintain it and charge the developer.

Scott Nickle, Bussen-Mayer Engineering Group, Inc., engineer of record for the project, echoed Mrs. Lamb's comments on the issue of historical drainage. He added that they have to accommodate historical drainage. The St. Johns River Water Management District does regulate diversion of upland surface water flows as it relates to wetlands. St. Johns wants to ensure that the existing wetland being preserved is hydrated properly.

Mrs. Palmer asked about incorporating some of the issues that the residents and developer agreed upon into the development agreement.

Mr. Rusnak said that they have agreed to work with the residents on landscaping and location/design of the wall.

Mr. Contreras said that Ms. Jones mentioned a right turn lane from Parkway to Wickham Road.

Mr. Rusnak replied that some of the items referenced by Ms. Jones surprised him. Although several issues were discussed, there was never a formal vote by the residents.

With regard to the right turn lane from eastbound Parkway to Wickham Road, Mr. Rusnak stated that staff didn't feel there was a need for a turn lane at this point because their development is concentrated north. Less than 10% of their generated traffic from this project will impact Parkway Drive. They are proposing two ingress/egress points on

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Parkway Drive. The secondary point will be a right in/right out only, which will accommodate delivery trucks, dump trucks, etc. And, they will provide a turn lane at their expense.

Mayor Goode closed the public hearing.

Moved by Contreras/Corby for approval of SP-2007-17 based upon the findings and conditions contained in the Planning and Zoning Board memorandum and the forthcoming developer's agreement.

Attorney Gougelman noted that a developer's agreement is not contemplated for this item. However, staff could take some of the items mentioned and incorporate them as conditions into the stormwater maintenance agreement.

The maker/seconded agreed.

The roll call vote was:

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

Motion carried unanimously.

9. ORDINANCE NO. 2007-93 (CU-2007-10) STACK CROSSING: (Second 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 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.) (First Reading - 11/27/07)

Attorney Gougelman read Ordinance No. 2007-93 by title. There were no comments during the public hearing and no disclosures by Council.

Moved by LaRusso/Thomas for approval of Ordinance No. 2007-93 based upon the findings contained in the Planning and Zoning Board memorandum and the staff condition. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

10. COUNCIL ACTION RE: Contract award for waterline replacements at various locations (Ballard Park, Phase 2), Project No. 30407, Maxwell Contracting, Inc., Cocoa, FL - \$431,000; and transfer of \$26,905 from Water & Sewer Capital Improvements Miscellaneous Project No. 30099 to supplement this project budget.

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City Engineer Jenni Lamb reviewed the item and noted that this project is part of the on-going program to replace and upgrade existing two-inch and six-inch galvanized, cast iron or undersized water mains. Approximately 5,010 linear feet of water line will be replaced and new fire hydrants will be installed with this contract.

Moved by Palmer/Meehan for approval of the construction contract with Maxwell Contracting, Inc. in the amount of \$431,000 for the Waterline Replacement – Various Locations (Ballard Park Phase 2) and a budget transfer of \$26,905 from Water & Sewer Capital Improvement – Miscellaneous (Project No. 30099) to supplement this project budget. Motion carried unanimously.

11. COUNCIL ACTION RE: Contract award for professional engineering services for D.B. Lee Wastewater Reclamation Facilities improvements, Project No. 31507 and Grant Street and D.B. Lee Water Reclamation Facilities emergency generator and fuel storage improvements, Project No. 31807, Boyle Engineering Corporation, Palm Bay, FL - \$729,818; authorization to combine projects into one Project No. 31507.

Mrs. Lamb provided an overview of the item. On August 28, 2007, Council authorized negotiations with Boyle Engineering Corporation after being selected as the most qualified firm to provide professional engineering services to the City for the Grant Street and D.B. Lee Water Reclamation Facilities Emergency Generator and Fuel Storage Improvements. On September 11, Council authorized negotiations with Boyle after being selected as the most qualified firm to provide professional engineering services for the D.B. Lee Water Reclamation Facilities Reuse Improvements.

Since Boyle Engineering Corporation was selected for both projects, staff determined that the design, permitting, bidding and construction could be more effectively completed under one contract. The scope of work includes design, geotechnical investigation, permitting, bidding/contract award services, and construction phase services for constructing additional reuse capacity at the D.B. Lee Water Reclamation Facilities (WRF) and emergency generator and fuel storage at both facilities.

Mrs. Lamb confirmed for Mr. LaRusso that staff did not have separate prices on the contracts before deciding to combine them into one. She added that this will shorten the process and construction will occur in a shorter time period.

Mr. LaRusso referenced some of the contract sections and said he believes it is written in Boyle's favor. Mrs. Lamb assured Council that there was give and take on this contract; it is not a boilerplate contract.

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Moved by LaRusso/Meehan for approval of the Professional Engineering Services Contract with Boyle Engineering Corporation for the D.B. Lee WRF Improvements Project and the Grant Street and D.B. Lee WRF Emergency Generator and Fuel Storage Improvements Project in the amount of \$729,818 and combining the project budgets as the D.B. Lee Water Reclamation Facilities Various Improvements and Water Reclamation Facilities Emergency Generator and Fuel Storage Improvements Project No. 31507. Motion carried unanimously.

12. COUNCIL ACTION RE: Amendment No. 9 to the agreement between the City of Melbourne and Hazen & Sawyer, P.C., Ft. Pierce, FL, for engineering services for the design of the Grant Street Water Reclamation Facility Reuse Construction, Phase I, Project No. 31108 - \$247,750.

Mrs. Lamb reviewed the agenda report and explained that the original design of this project was completed in 2001; however, there was insufficient funding to construct the project at that time. With the renewed emphasis on reclaimed water use by several regulatory agencies, it has now become necessary to proceed with the project. The plans must be redesigned to include new technology and advances in the filtration industry.

Moved by Meehan/Contreras for approval of Amendment No. 9 to Hazen & Sawyer, P.C. for the design of the Grant Street Water Reclamation Facility Reuse Construction Phase I, Project No. 31108 in the amount of \$247,750. Motion carried unanimously.

13. CONSENT AGENDA:

Moved by Contreras/LaRusso for approval of the consent agenda as recommended. Motion carried unanimously.

- a. Purchase of 30 replacement vehicles for the Police Department, Garber Chevrolet, Green Cove Springs, FL - \$699,765 and Duval Ford, Jacksonville, FL - \$28,348.13; and approval of a 48-month lease, Mears Motor Leasing, Orlando, FL - \$16,410.78/month, total lease cost of \$787,717.44.
- b. Contract award for lot mowing, trimming, and clearing, Greener Pastures Turf Corporation, Palm Bay, FL - at specified per unit prices, total estimated annual cost of \$76,752.
- c. Purchase of 12 PocketCitation™ ticket writer units and associated hardware, Advanced Public Safety, Deerfield Beach, FL - \$60,032.34; and software licenses, technical services, and project management, Tiburon, Inc., Pleasanton, CA - \$24,600.
- d. Wireless data communications services for the Police Department, Verizon Select Services, Inc., Irving, TX - \$56,623.30.

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- e. Traffic signal replacement at NASA Boulevard and Evans Road, Traffic Control Devices, Inc., Altamonte Springs, FL - \$17,055.94.
- f. Purchase of additional radio console server terminals and related components, Communications International, Inc., Vero Beach, FL - \$12,674.50; and approval of an appropriation of \$12,675 from the Law Enforcement Trust Fund.
- g. Approval to proceed with a proposed amendment to the Developers Agreement for Mayfair between Southern Homes of Melbourne II, LLC and the City of Melbourne.
- h. Resolution No. 2067: A resolution authorizing the City Manager to execute a master agreement between the Board of County Commissioners of Brevard County, the Sheriff of Brevard County, the City of Cape Canaveral, the City of Cocoa, the City of Cocoa Beach, the Town of Grant/Valkaria, the Town of Indialantic, the City of Indian Harbour Beach, the Town of Malabar, the City of Melbourne, the Town of Melbourne Beach, the Town of Melbourne Village, the City of Palm Bay, the Town of Palm Shores, the City of Rockledge, the City of Satellite Beach, the City of Titusville, and the City of West Melbourne, with regard to the maintenance and upkeep of the countywide intergovernmental radio communication system (800 MHz).

14. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

15. RESOLUTION NO. 2068: (Public Hearing) A resolution designating 1809 Riverview Drive (HD-2007-01) as an historic resource.

Planning and Economic Development Director Cindy Dittmer provided an overview. The following is an excerpt from the agenda report: *This is a request to approve a resolution for local historic designation of 1809 Riverview Drive. A designation report has been completed by the Historic Preservation Officer, which outlines the criteria for designation under Section 10-229 (a), Melbourne City Code.*

At a public hearing on November 20, 2007, the Historic Preservation Board voted unanimously to recommend that City Council pass a resolution approving the historic designation of 1809 Riverview Drive (HD-2007-01).

Mayor Goode opened the public hearing.

Diane Barile, 1809 Riverview Drive, informed Council that this will be the first historic structure established under the historic preservation ordinance. She noted that her house has been the “guinea pig” and she is pleased to have gone through the process.

Peter Flotz, 812 East Strawbridge Avenue, Chairman of the Historic Preservation Board, thanked Ms. Barile for being the test case. He expressed appreciation to the members of

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the Historic Board and noted that they spent hours reviewing the application and the process to ensure everything was in order. He asked Council to approve the item

Mrs. Corby asked the status of designating Riverview Drive as an historic roadway. Mr. Flotz replied that they are taking one step at a time. He noted that Ms. Barile's home is in a different neighborhood.

The City Manager added that the Historic Preservation Board asked the preservation officer, who is under contract, about the designation of Riverview Drive. The preservation officer advised against taking formal action on road right-of-way at this time. Right now, the board wants to experiment with real property/individual property and address district issues later.

Moved by Meehan/Thomas for approval of Resolution No. 2068. Motion carried unanimously.

16. RESOLUTION NO. 2069: (Public Hearing) A resolution designating 1330 North Harbor City Boulevard (FOC-2007-11) as a Brownfield Designation Area. (Applicant - Manatee Point, Inc.)

Note: Mayor and Council received a memorandum from the Planning and Zoning Board dated December 7, 2007 indicating that on December 6, the board reviewed the referenced request and made a finding of consistency.

Mrs. Dittmer provided an overview. The following is an excerpt from the agenda report: *This is a request for approval of a resolution to allow the designation of a Brownfield area in compliance with Florida Statutes. Manatee Point, Inc. has approached the City with a request to designate a Brownfield area. A portion of the area is the former Townsend Tire property located at the southwest corner of U. S. 1 and Eau Gallie Boulevard, which has been identified as a contaminated site.*

A Brownfield area is a contiguous area of one or more Brownfield sites, some of which may not be contaminated. As a requirement for the designation of a Brownfield area, the local governing body must pass a resolution designating the area, along with a finding of consistency with the Comprehensive Plan. Once the designation is approved the "person responsible" may enter into a Brownfield site rehabilitation agreement with the Department of Environmental Protection (DEP). Mr. James Stivers has been identified as the person responsible for the Brownfield site rehabilitation. Additionally, the creation of at least five new jobs at a Brownfield site will make the site eligible for State income tax reimbursement.

City staff had recently met with representatives from DEP to discuss the potential of designating a large area within the City as a Brownfield area due to the economic development incentives that are available. In addition to funds to clean up a contaminated site, state funding is available for the creation of new jobs in the community. City staff may return to City Council in the future for a larger Brownfield area designation.

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Council Member Mark LaRusso said that the agenda materials indicate that Mr. Stivers would be responsible for all financial requirements. Mrs. Dittmer agreed. Mr. LaRusso asked if there would be any negative financial impact on the owner or the City as a result of this designation. Mrs. Dittmer replied that there are no downsides. The benefit to the designation is that there are economic incentives. An owner can gain incentives and funding to help clean up the site. Additionally, a Brownfield area doesn't have to be contaminated; there could be a perception of contamination.

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

Moved by Meehan/Contreras for approval of Resolution No. 2069. Motion carried unanimously.

17. COUNCIL ACTION RE: Approval of a grant application relating to Historic Preservation.

- a. Resolution No. 2070: A resolution authorizing the City Manager to submit a grant application in the amount of \$20,000 to the Florida Department of State, Division of Historic Resources to provide funding for a survey of historic resources within the Downtown Melbourne and Eau Gallie Community Redevelopment areas with matching funds of \$20,000 to be funded from these Community Redevelopment Areas.

Mrs. Dittmer reviewed the agenda report.

Diane Barile, Historic Preservation Board, was present and available for questions. She elaborated on a project involving her students.

Moved by Thomas/LaRusso for approval of Resolution No. 2070. Motion carried unanimously.

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

- b. Approval of \$10,000 in matching funds for the grant application to Florida Department of State, Division of Historic Resources.

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

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

- c. Approval of \$10,000 in matching funds for the grant application to Florida Department of State, Division of Historic Resources.

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

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Council reconvened for the remaining agenda items.

18. ORDINANCE NO. 2007-94 (CPA-2007-10) AND ORDINANCE NO 2007-95 (Z-2007-1122) BRUCE BUGGS: Ordinances providing for a Comprehensive Plan Amendment and a change in zoning on a 4.3±-acre portion of a 5.5-acre parcel, located on the south side of Church Street, east of Grant Street, and west of Race Street. (Owner/Applicant/ Representative - Bruce Buggs) (P&Z Board - 11/15/07)
- a. Ordinance No. 2007-94/CPA-2007-10: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Low Density Residential to a mixed-use Public Lands and Institutions/Low Density Residential on a 4.3±-acre portion of a 5.5-acre parcel.
 - b. Ordinance No. 2007-95/Z-2007-1122: (First Reading/Public Hearing) An ordinance changing the zoning from R-1A (Single-Family Low Density Residential) to I-1 (Institutional) on a 4.3±-acre portion of a 5.5-acre parcel in order to use the site as a cemetery.

Attorney Gougelman read the ordinances by title. Mrs. Dittmer briefed Council and located the property on the map. The Planning and Zoning Board voted six to one to recommend approval of this request, amended the conditions to remove the allowance for a variance for the six-foot masonry wall, and added a condition that will require re-approval of a site plan if above ground structures are proposed.

A petition regarding the rezoning request has been submitted by surrounding property owners. The residents object to the applicant's desire to leave the existing PVC fence in lieu of the requirement for a six-foot masonry wall along the east, west, and south property lines.

Mrs. Dittmer referenced the memorandum distributed to Mayor and Council and provided an update on the petition. Staff calculated the petition and determined that it was signed by 5.79% of the owners representing 20% of the property within 500' of the request. Therefore, a 6/7 vote by Council during second reading will not be required.

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

Bruce Buggs, applicant, was present and available for questions.

Mrs. Corby asked the applicant if he intends to keep some of the trees in the area, which could act as a buffer. Mr. Buggs replied that they will retain all the trees, with the exception of pepper trees, etc.

The Mayor closed the public hearing.

Moved by Meehan/Contreras for approval of Ordinance No. 2007-94 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

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Moved by Meehan/Thomas for approval of Ordinance No. 2007-95, based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

19. ORDINANCE NO. 2007-96 (CU-2007-13) NEIL BUTLER: (First Reading/Public Hearing) An ordinance granting a conditional use to allow the consumption of alcohol on the premises on a 0.86±-acre parcel zoned C-3 (Central Business District), located on the south side of Strawbridge Avenue, north of New Haven Avenue, and west of Municipal Lane. (Owners - Susan S. & C. Vance Brand, Trustees) (Applicant/Representative - Neil Butler) (P&Z Board - 11/15/07)

Attorney Gougelman read Ordinance No. 2007-96 by title. Mrs. Dittmer briefed Council and located the property on the map. The Planning and Zoning Board voted unanimously to recommend approval of this request.

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

Neil Butler, 3174 Brentwood Lane, applicant, was present and available for questions.

Moved by Meehan/Thomas for approval of Ordinance No. 2007-96 based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

20. ORDINANCE NO. 2007-97 (CU-2007-11/SP-2007-27) BABCOCK & BREVARD C-STORE: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow the replacement of an existing 1,829 square foot gas station/automotive repair building and eight fueling stations with a new 3,212 square foot convenience store and 12 fueling stations on a 0.69±-acre parcel zoned C-2 (General Commercial), located on the southwest corner of Brevard Drive and Babcock Street. (Owner - Thomas J. & Linda R. Ondriezek) (Applicant - All American Oil, Inc.) (Representative - Luke Miorelli, P.E., ME Construction, Inc.) (P&Z Board - 11/15/07)

The City Attorney read the ordinance by title and Mrs. Dittmer provided a brief. During the public hearing portion of the Planning and Zoning Board meeting, three residents expressed concern regarding the location of the fuel tanks, outside storage, proper buffering for residential properties, lighting, and overall appearance. One resident did speak in favor of the request, noting the project would be a great improvement to the area and provide additional safety.

After discussion regarding the aesthetics of service stations, the Planning and Zoning Board voted unanimously to recommend approval of the request with additional conditions pertaining to the removal of additional signage square footage and a limit to the height of the canopy.

Vice Mayor Meehan disclosed that she visited the site to determine its location.

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Mayor Goode opened the public hearing.

Luke Miorelli, engineer for the project, discussed the plan and stated that he agrees with the conditions.

Moved by Contreras/Meehan for approval of Ordinance No. 2007-97 based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

21. ORDINANCE NO. 2007-98 (CU-2007-14/SP-2007-28) 150 NORTH BABCOCK STREET: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow construction of a 64,905 square foot, three-story building at a height of up to 45 feet on a 2.85±-acre parcel zoned C-1A (Professional, Offices, and Services) and C-2 (General Commercial), located on the west side of Babcock Street, north of Brevard Drive, and south of Charles Drive. (Owner/Applicant - Sutton Properties, LLP) (Representative - Jake Wise, P.E., Construction Engineering Group) (P&Z Board - 11/15/07)

The City Attorney read Ordinance No. 2007-98 by title. Mrs. Dittmer reviewed the agenda report and located the property on the map.

City staff approved the site plan (under three acres); however, during the design of the building the applicant determined that an additional five feet of building height would be necessary to accommodate technological infrastructure between floors. The applicant needs a conditional use to allow a 45-foot building height.

The formal site plan request is identical to the previous site plan submitted with the exception that access has been removed from Charles Drive, as directed by City Council during site plan approval of the adjacent parcel.

During the public hearing portion of the Planning and Zoning Board meeting, three residents expressed concern regarding the additional height, an increase in traffic, landscape visibility, and the possibility of property values dropping. One resident spoke in favor of the developer's and the civil engineer's work.

The Planning and Zoning Board voted unanimously to recommend approval of the request.

There were no disclosures by Council.

Jake Wise, 2651 West Eau Gallie Boulevard, explained that a high tech building requires more distance between floors. The site has the proper zoning and land use. The applicant has been working with the residents; four neighborhood meetings have been held on both projects; they plan to construct the minimum Code allowed parking on site to keep activity away from the residential parcels to the north and west; they used the building as much as possible to create a buffer; they are providing a substantial amount of green space and providing for tree preservation; they are adding a right decel lane off

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Babcock Street; area neighbors are not at this meeting because they support the project due to the buffering that will be provided; and the residents participated in the landscape design.

Mr. Wise submitted for the record a three-sheet document titled “100 North Babcock Vegetation Removal and Preservation Plan”, dated December 7, 2007.

Continuing, Mr. Wise submitted a one-sheet plan dated November 13, 2007, which illustrates the top of the parapet on the first building design and the new building design at 45’. He explained that the residents will not see a change with respect to height. Mr. Wise closed by saying that they agree with all staff conditions. He noted that Mr. Sutton is available for questions.

Mayor Goode closed the public hearing.

Moved by Palmer/Meehan for approval of Ordinance No. 2007-98, based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

22. ORDINANCE NO. 2007-99 DOG-FRIENDLY DINING: (First Reading/Public Hearing) An ordinance amending Chapter 5, entitled “Animals,” by adding Article IV, to establish regulations for permitting patrons’ dogs at certain designated outdoor portions of restaurants. (Applicant - City of Melbourne) (Requested by Council - 10/23/07)

Note: In addition to the agenda material, Mayor and Council received an e-mail dated December 11, 2007 from Joshua Norcross (Planning and Zoning Board member) clarifying his position on this issue and transmitting the House of Representatives staff analysis on this item.

Attorney Gougelman read Ordinance No. 2007-99 by title. The following is an excerpt from the agenda report:

Currently Florida Statutes require the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation to adopt sanitation and safety requirements relating to physical facilities. The requirements adopt by reference portions of the Food and Drug Administration Food Code. The Food Code generally prohibits live animals from restaurants, unless a local government chooses to adopt an ordinance establishing a local exemption to certain provisions to permit patrons’ dogs at certain designated outdoor portions of eating establishments. Establishing such ordinance complies with a three-year pilot program established by Florida Statutes, Section 509.233.

Restaurants desiring to permit dogs in their outdoor area of the restaurant shall apply for a permit and will provide additional sanitation measures to promote increased cleanliness in outdoor dining areas. Signs shall be posted in designated areas, indicating the rules for dining with dogs.

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During the public hearing portion of the Planning and Zoning Board meeting, one resident spoke against the proposed amendment due to concerns regarding where the animals will be permitted to go for bathroom purposes. One resident spoke in favor of the request, as this person reported great experiences with this type of allowance in the past.

After a brief discussion among Board members, with some concern expressed regarding the need to address safety within the ordinance, the Planning and Zoning Board voted five to two to recommend approval of this ordinance.

The Mayor opened public hearing.

Mike Pavlick, Mustard's Last Stand, 415 East New Haven Avenue, pointed out that dogs are currently on restaurant patios. This ordinance will set forth rules and standards for restaurants to follow. Mr. Pavlick reported that for the past 15 years he has owned and worked in restaurants that allow dogs. The concerns seem to be related to aggressive dogs and he has never experienced a problem in 15 years. People who bring their dogs to an outdoor dining area are bringing a "family member" that is well trained and groomed.

Mr. Pavlick submitted a petition containing 621 signatures, which states "please sign our petition approving an ordinance allowing leashed and well-behaved dogs to accompany their owners on outdoor dining establishment patios."

Mr. Thomas asked Mr. Pavlick if he is aware of any sanitation concerns away from the restaurant. Mr. Pavlick said he has seen dogs on the vacant lot next to his property. The owners generally clean up after their dogs. In the dining area, he has never seen a sanitation problem.

That concluded comments from the audience. The Mayor closed the public hearing.

Moved by Meehan/Contreras for approval of Ordinance No. 2007-99.

Mrs. Palmer said she has visited restaurants in the Florida Keys that allow dogs and she is in favor of this ordinance. She asked how this ordinance will be regulated if one restaurant in the Downtown area allows dogs and the adjacent restaurant does not. She pointed out that the sidewalk area of one restaurant has access to the sidewalk area of the adjacent restaurant.

Mrs. Dittmer replied that she is not sure if we have two restaurants side by side with outdoor dining. If that occurred, she is not sure how the City would regulate the ordinance. Mrs. Dittmer added that outdoor dining is associated with a restaurant's frontage only.

Mrs. Palmer pointed out that if the public doesn't appreciate this, a restaurant's business will decline. She asked staff to keep Council apprised of any conflicts that arise.

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Mrs. Corby referenced the House of Representatives staff analysis and asked how the non-recurring costs and recurring costs would apply to the City. She asked if the City would be subject to these costs if this ordinance is adopted.

Attorney Gougelman replied no because restaurants are regulated by the Department of Business and Professional Regulation, not the City of Melbourne. The fiscal impact outlined in the analysis describes costs that the Department of Business and Professional Regulation will incur. This is a pilot program and the Legislature will have to make a decision whether or not to extend it after 2009. Some of the expenses outlined in the analysis are geared toward monitoring and preparing data necessary to report to the Legislature. The City's costs will be in the area of Code Enforcement and at this point, we don't know what those costs will be.

Mrs. Dittmer confirmed for Mrs. Corby that it will be a restaurant's responsibility to place signage, provide clean-up kits, etc. The City will not participate in those costs.

Responding to Mrs. Corby, Attorney Gougelman explained that a business owner who wants dogs will have to apply for a permit through the City. If they don't apply, they will not be allowed to have dogs.

Mr. LaRusso pointed out that this is a free market and customers will let restaurant owners know their preference. Customers will determine if they eat at a restaurant again based on past experience.

The question was called. Motion carried unanimously.

23. ORDINANCE NO. 2007-100 (LDR-2007-09/FOC-2007-10) DEVELOPMENT AGREEMENTS: (First Reading/Public Hearing) An ordinance amending Appendix D, Chapter 3, entitled "Concurrency," by amending Article VIII as it relates to the maximum duration of developers agreements in accordance with Florida Statutes. (Applicant - City of Melbourne)

Mr. Gougelman read the ordinance by title. The following is an excerpt from the agenda report:

Appendix D, Chapter 3, Article VIII, of the Land Development Code provides the process for consideration of a development agreement between the City and a developer of real property. The Code provisions implement the portion of Florida's growth management statutes that relate to development agreements.

This year the Florida Legislature changed the law with regard to the maximum duration of development agreements. The law now permits local governments to approve development agreements for periods of up to 20 years. It is proposed that the City Code be revised to be consistent with this amendment to Florida law.

The Comprehensive Plan contains no objectives or policies that deal directly with development agreements. Thus, the Comprehensive Plan does not prohibit the

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proposed amendment to the City Code. Further, the proposed ordinance implements an amendment to Florida's growth management laws. To that extent it could be said that development agreements are a tool to implement the City's Comprehensive Plan. Thus, there is a basis for finding the proposed ordinance consistent with the City's Comprehensive Plan.

The Planning and Zoning Board voted unanimously to recommend approval.

Mrs. Palmer asked why we are changing the Code to allow development agreements to have a 20-year term.

Attorney Gougelman replied that a development agreement is fairly onerous and lays out the requirements as far as exactions – not just impact fees – for site improvements. It includes restrictions that are over and above what the City Code outlines. If the City expects a developer to ante up at the beginning of the process, the developer would want to obtain certain vested rights by entering into an agreement. An applicant would not request a 20-year term on a smaller scale project. The 20-year term would apply to a larger project.

Mrs. Palmer stated that she can't imagine a project being on hold for 20 years. Attorney Gougelman clarified that the project would not be on hold. He added that a 15 – 20 year term would be for a large-scale project such as a Development of Regional Impact.

Mrs. Palmer said that she doesn't understand the reasons for allowing a 20-year term. Attorney Gougelman said that the Code provisions simply set forth the public hearing process and general parameters; it is a state process. The Legislature changed the term to allow up to 20 years and staff is proposing to change the City's Code to be consistent with State Statutes.

Attorney Gougelman confirmed for Mr. LaRusso that the duration of the agreement is determined by City Council on a case-by-case basis based on the scope of the project and what the developer is proposing. Mr. Gougelman outlined how this might apply to a Development of Regional Impact. Additionally, he noted that a development agreement usually contains exactions or requirements over and above what the Code requires. A developer would make such a request to obtain a vested right over a certain period of time. One reason might be for financing; the owner/developer may need to appease the bank.

Mrs. Palmer said that there is nothing in the ordinance that indicates a 20-year term would normally apply to a Development of Regional Impact. It could apply to a condominium and it would allow a developer to lock in approval for up to 20 years based on what's applicable today. During that time, the community and standards would change, yet the developer would be locked in. Too many changes could take place during that time.

In conclusion, Mrs. Palmer said that unless language is incorporated providing that the 20-year period would apply to a Development of Regional Impact, she won't support the

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ability for any City Council to commit to a project for 20 years.

Mrs. Corby said she is not clear on this item. She asked how this would apply to current development that is in process. Attorney Gougelman replied that it wouldn't apply to any development that currently has a development agreement with the City unless the owner/developer made application to the City Council. With regard to any development currently pending that might apply for a development agreement, this ordinance could apply. He noted that he is not aware of any pending projects seeking a 15- or 20-year term.

Mayor Goode asked what prompted the drafting of this ordinance.

Mrs. Corby stated that she is disappointed with the way this item came about and the lack of information provided to Council. Attorney Gougelman repeated that our Code is simply being changed to be consistent with the change the Legislature made this year.

Mrs. Corby asked if the decision to allow a 20-year agreement would be market driven. The City Attorney replied that it could; however, it would more likely be based on the scale of the project.

Mrs. Corby asked if the ordinance could be revised to apply to a Development of Regional Impact. Mr. Gougelman replied yes and added that if Council is not happy with this ordinance, it does not have to be approved. The ordinance gives the City Council the option, on a case-by-case basis, to allow for a term of up to 20 years. He pointed out that depending on how the ordinance is revised, a development slightly smaller than a DRI would only be able to have a seven-year agreement.

Mayor Goode asked how many Developments of Regional Impact have been approved in the City. Attorney Gougelman replied one.

Mr. LaRusso said that a 20-year period scares him because he does not know what the ramifications of approving such a term would be in the future.

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

Moved by Goode/Meehan to (postpone) this item until the February 12, 2008 meeting.

Mayor Goode said he made this motion to allow staff time to better explain the proposed change. Mrs. Palmer asked for discussion. Mayor Goode replied that there is no discussion on a motion to (postpone). Mr. Thomas asked if he could comment and the Mayor replied no.

The question was called. The roll call vote was:

Aye: LaRusso, Corby, Meehan and Goode

Nay: Contreras, Thomas and Palmer

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Motion carried.

Mr. Thomas said he voted nay because he wanted the opportunity to speak on this item. Mayor Goode responded that it is too late, Council is ready for the next agenda item.

Moved by Corby/Thomas to allow Mr. Thomas to say what's on his mind. (Motion was not voted on.)

Mrs. Corby stated that she appreciates the way the Mayor runs meetings; however, his job is to run meetings – not control Council. A Council Member has a right to say what's on his mind, and a member should be allowed to speak out of respect.

Mayor Goode said that he made the motion and it was seconded. There is no discussion on a motion to (postpone). Mayor Goode asked Mr. Thomas to comment.

Mr. Thomas referenced Mrs. Palmer's observations and asked if there is a way staff can amend the ordinance before it returns to address Developments of Regional Impact. Attorney Gougelman said that Council can have the ordinance any way it wants it.

Mr. Schluckebier pointed out that this was an attempt to make our Code consistent with state law. If Council does not wish to do that, the ordinance should be defeated. Council has the latitude to go with a shorter time period, apply a longer time period to large-scale projects or stay with the current Code.

Mrs. Palmer pointed out that when discussion hasn't finished and the Mayor jumps in and postpones an item, thereby cutting off discussion, he has co-opted the issue. She added that she was ready to make a motion to deny and now we are going into February with the item. Mrs. Palmer said that she has a feeling developers will be calling members of Council in the meantime.

Mayor Goode pointed out that the City has only had one Development of Regional Impact in its history. Mrs. Corby asked why, if that is the case, this was brought to the table. The only answer she has heard is that it is to be consistent with state law. Mayor Goode said that the City does that on a lot of issues.

Mrs. Palmer stated that since this item is returning in February without any discussion on how it should be changed, it should return as written for an up or down vote. If it is voted down, then staff can propose alternatives.

24. COUNCIL ACTION RE: School Resource Officers

- a. Agreement between the City of Melbourne and the School Board of Brevard County for six School Resource Officers at six schools for the 2007-2008 school year from August 20, 2007 through June 8, 2008 at a maximum reimbursement of \$27,500 per officer, totaling \$165,000.

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- b. Agreement between the City of Melbourne and the School Board of Brevard County for one School Resource Officer at the South Area Adult Community Education Center for the 2007-2008 school year from August 20, 2007 through June 8, 2008 at a 100% reimbursement of salary plus benefits totaling \$55,762.

The City Manager introduced the item and noted that the Police Chief is available for questions. The following is an excerpt from the agenda report:

The School Resource Officer agreements are for the entire school year, a 190-day period (August 20, 2007 through June 8, 2008). The Brevard County School Board has not made payment on the three previous monthly contracts and has requested that this contract, which is at a higher reimbursement rate, cover the entire 2007-2008 school year.

The contract for the Junior/Senior High Schools (Eau Gallie High, Melbourne High, Palm Bay High, Johnson Middle, Stone Middle and Westshore Junior-Senior) is at a reimbursement cost of \$27,500 for each of the six officers, totaling \$165,000. The South Area Adult Education Center contract will be reimbursed at 100% of one officer's salary, including benefits, totaling \$55,762.

Moved by Thomas/Corby for approval of the agreement between the City of Melbourne and the School Board of Brevard County for six School Resource Officers at six schools for the 2007-2008 school year from August 20, 2007 through June 8, 2008 at a maximum reimbursement of \$27,500 per officer, totaling \$165,000.

Mrs. Corby asked the Chief if, prior to making the decision to combine or share resource officers, he discussed the idea with the school, parents or people affected by the decision. Chief Carey replied no.

The question was called. Motion carried unanimously.

Moved by Palmer/LaRusso for approval of the agreement between the City of Melbourne and the School Board of Brevard County for one School Resource Officer at the South Area Adult Community Education Center for the 2007-2008 school year from August 20, 2007 through June 8, 2008 at a 100% reimbursement of salary plus benefits totaling \$55,762. Motion carried unanimously.

25. COUNCIL ACTION RE: Board Appointments

- a. Appointment of two members to the Melbourne Housing Authority.

Moved by Contreras/LaRusso to confirm the Mayor's appointment of Thomas Regan as the Public Housing Tenant and Donna Humbert as a regular member to the Melbourne Housing Authority. Motion carried unanimously.

- b. Appointment of voting delegate/director and alternate to the Space Coast League of Cities. (Required by SCLC By-Laws)

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Mayor Goode said that he is currently the voting delegate and he would like to provide the opportunity for another member to serve. Mrs. Palmer stated that she would like to remain as the alternate member.

Mrs. Palmer nominated Kathy Meehan. Mrs. Meehan informed Council that she is Vice President on the Board of Directors. Mr. Schluckebier confirmed that is a separate position. Mrs. Palmer withdrew her nomination of Mrs. Meehan and said she would serve as the City's voting delegate.

Moved by Goode/LaRusso to appoint Cheryl Palmer as the City's voting delegate to the Space Coast League of Cities. Motion carried unanimously.

Mr. LaRusso said he would consider serving as the alternate member. Moved by LaRusso/Corby to appoint Mark LaRusso as the City's alternate voting delegate to the Space Coast League of Cities. Motion carried unanimously.

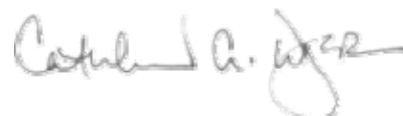
26. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mayor Goode reported that Mayor Del Yonts from the Town of Grant-Valkaria would like to participate in the Space Coast League of Cities by co-hosting the annual October dinner meeting with Melbourne. By consensus, Council agreed.

27. ADJOURNMENT

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

The meeting adjourned at 8:40 p.m.



City Clerk – 1/3/2008

Approved by Council: _____