

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 8, 2008



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 Joseph Rimshaw, Our Lady of Lourdes, 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

Note: The Beautification and Environmental Advisory Committee “We Noticed” certificate was presented to New Vision Full Service Nursery for outstanding Christmas decorations. A representative from the nursery was not able to attend and accept the award.

Mayor Goode read a proclamation declaring January 17, 2008 as “Howard Lance Day” in the City of Melbourne in recognition of Mr. Lance’s phenomenal corporate and community leadership. Mr. Lance is the President, Chairman, and Chief Executive Officer of Harris Corporation in Melbourne.

5. Approval of Minutes - December 11, 2007 Regular Meeting

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

6. City Manager’s Report

Note: The City Council received a memorandum from the City Manager correcting the dates on the following two events:

- The 2008 Arbor Day celebration will be held on Friday, January 18.
- The City Manager has been invited to speak to the League of Women Voters of the Space Coast on Friday, January 18, 2008.

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Council Member Mark LaRusso referenced the courtesy notices sent by City staff to those who have building permits or approved site plans regarding the late January payment deadline to effect the lower transportation impact fees. He thanked staff for being proactive on this item.

7. Public Comments

None.

7.1 Update from Ron Sellers, Chief Executive Officer, Brevard Family of Housing Authorities.

Mr. Sellers reported that the Housing Authority began the process of relocating residents from Ramshur towers the second week in October and finished on November 17. Sixty-five people were relocated in 45 days. All residents were settled in their new places prior to Thanksgiving. He thanked the Housing and Community Development staff for its participation and assistance and added that informal contact with a number of residents has shown they are happy and pleased with the process. The Housing Authority plans to provide the residents with quarterly updates on the Silver Sands project.

UNFINISHED BUSINESS

8. 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)

a. Ordinance No. 2007-94/CPA-2007-10: (Second 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. (First Reading - 12/11/07)

b. Ordinance No. 2007-95/Z-2007-1122: (Second 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. (First Reading - 12/11/07)

City Attorney Paul Gougelman read the ordinances by title. There were no Council disclosures and no comments during the public hearing.

Moved by Meehan/Thomas for approval of Ordinance No. 2007-94 based upon the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

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

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Motion carried unanimously.

Moved by Contreras/Meehan for approval of Ordinance No. 2007-95 based upon the findings and conditions 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.

9. ORDINANCE NO. 2007-96 (CU-2007-13) NEIL BUTLER: (Second 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) (First Reading - 12/11/07)

Note: The diagram distributed to Mayor and Council from the City Attorney, which shows the specific location of the establishment, will be attached to the ordinance as Exhibit "A."

Attorney Gougelman read Ordinance No. 2007-96 by title. Council made no disclosures and there were no comments during the public hearing.

Moved by Meehan/LaRusso for approval of Ordinance No. 2007-96 based upon the findings and conditions 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. 2007-97 (CU-2007-11/SP-2007-27) BABCOCK & BREVARD C-STORE: (Second 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.) (First Reading - 12/11/07)

The City Attorney read the ordinance by title. There were no disclosures from Council. The public hearing was opened and closed with no comments.

Moved by Thomas/Meehan for approval of Ordinance No. 2007-97 based upon the findings and conditions contained in the Planning and Zoning Board memorandum. The roll call vote was:

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

Motion carried unanimously.

11. ORDINANCE NO. 2007-98 (CU-2007-14/SP-2007-28) 150 NORTH BABCOCK STREET: (Second 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) (First Reading - 12/11/07)

Attorney Gougelman read the ordinance by its title. Council made no disclosures; there were no public comments. Jake Wise, representing the applicant, was present and available for questions.

Moved by LaRusso/Contreras for approval of Ordinance No. 2007-98 based upon the findings and conditions 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.

12. ORDINANCE NO. 2007-99 DOG-FRIENDLY DINING: (Second 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) (First Reading - 12/11/07)

Note: City Council received an e-mail dated January 8 from Jennifer Cleveland expressing support for the ordinance.

The City Attorney read Ordinance No. 2007-99 by its title. Mayor Goode opened the public hearing.

Mike Pavlick, 415 East New Haven Avenue, expressed support for adoption of the ordinance.

The Mayor closed the public hearing.

Moved by Meehan/Palmer for approval of Ordinance No. 2007-99. The roll call vote was:

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

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Motion carried unanimously.

13. COUNCIL ACTION RE: Employee Survey Action Plan for Improvements (Postponed - 11/27/07)

From the agenda report: *This survey was commissioned pursuant to Council's direction. Approximately 75% of eligible full time and permanent part time employees responded to the survey prepared by Hull & Associates.*

The results are provided on a combined City basis and by each functional work group for seven major categories of the survey (performance evaluations, leadership, survey usefulness, work climate, communication, team work, and high standards of excellence). There were 36 individual statements related to these categories that employees were asked to rank on a scale of 1 to 10 their level of agreement and level of importance. There were four open-ended questions to which employees could respond and these comments are presented exactly as written by the employees.

On a combined City basis, the results were favorable with the highest score for the statement, "I like my job". Generally, employees were satisfied with performance evaluations, leadership, work climate, communications, teamwork, and high standards of excellence. Employees were least satisfied with the survey usefulness category.

Although results are favorable on a combined citywide basis, several areas for improvement were noted in specific functional work areas. Some functional work groups scored favorably in all or nearly all areas, while others did not score as well in several areas. For any functional work group that met certain threshold scores, Personnel will work with the Department Director and each Department's management team on an action plan for improvement. In several areas, more people-centered training is encouraged. In some work groups, both the training and focus groups will be required. It is also anticipated that the survey will be repeated in the next 12 – 15 months, particularly focusing in functional work groups that did not score well, to assess action plan results.

Council accepted the Employee Survey Report at the November 27, 2007 meeting and postponed discussion and approval of the action plan for improvement until this meeting.

City Manager Jack Schluckebier pointed out that Personnel Director Sandi Price is present. He reported that staff previously presented a plan to look for improvements from the areas that had certain scores within certain ranges and below certain thresholds. If Council finds that plan satisfactory, the proposal is to proceed with facilitated workshops and outside training over the next 12 months. After that has been accomplished, those particular areas would be re-tested.

Deputy City Manager Amy Elliott said that staff is pleased with the response rate. Seventy-five percent of the employees responded and the consensus is that people are quite satisfied with their jobs and the work climate. There were pockets in some departments in areas of categories that need focus and more work. The Personnel Director in conjunction with the Department Directors is working to establish specific

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training for departments that need help in areas based on the scores. The idea is to provide assistance to the departments to improve communication and leadership skills so they will do better during the re-test, which we expect to occur after the training takes place.

Mayor Goode said that he is pleased with the number that responded to the survey, although he isn't pleased with all of the responses.

Council Member Joanne Corby asked the Personnel Director or Mrs. Elliott to comment on the issues or particular problems that have been identified by the survey.

Mrs. Elliott referenced the scoring sheet in the agenda package that summarizes every functional work group, every category and every individual statement in the survey. The City identified thresholds where a score below that number would require remediation in that department for that particular category. It varied among departments. Some departments have problems in a lot of categories and some only have problems in certain areas. Staff plans to focus on those specific areas.

Mrs. Corby asked if the action plan presented, which includes training in leadership and communication, will be significant enough to specifically address each of those issues. Mrs. Elliott replied that is staff's hope.

Mrs. Corby said that one of the most important statements made in the report falls under the summary of the report: "The scores are not grades, but indications of the level of agreement with the statement." Continuing, Mrs. Corby said that a 1 –10 scale was used. Although she hasn't seen a 1-10 scale used in a long time, the theory behind that scale is that the layperson is able to compare the results with the scale system in our schools. This means that a score of 90-100=A, 80-90=B, 70-80=C, 60-70=D and below an F. She pointed out that the City's results are two Bs, three Cs, one D and one F.

Continuing, Mrs. Corby said that Council has been told not to look at the results in that manner and to simply look at the indicators of the level of agreement. That would move the layperson to quickly look at the results of level of agreement and level of importance. She informed Council that the City scored negative in each of the seven categories, and we have a combined negative score of 10.6. The gap graph has indicated that the City is not even living up to its own expectations.

Mrs. Corby pointed out that the next important area relates to survey usefulness. The question about whether the respondent feels they could be honest on the survey came in fairly high. However, the following, which she noted is a direct reflection on the City Council, received the lowest score: "I believe the City of Melbourne will take action based on the results of this survey." Mrs. Corby stated that concerns her because that category scored 37% - the single F. She stressed that our workforce doesn't believe that Council will take action on the results.

Mrs. Corby continued and said that she feels it would be a waste of time and money to implement any type of action plan that is going to use buzz words, trendy type programs,

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costly training, etc. to train on issues that we clearly haven't identified nor have we instituted a set measurement. Therefore, she can't support the proposed action plan.

Mrs. Corby said that staff is communicating, "Our employees are happy with their job." She said that the statement in the survey, "I like my job," relates to functionality. For the most part she really believes that our workforce likes what they do. However, that statement doesn't ask if they like who they do it with. They could be working with people who "brighten up the room every time they walk out." It clearly doesn't address that issue and it has nothing to do with work climate; climate relates to work environment.

In conclusion, Mrs. Corby said she doesn't feel this plan would be beneficial. Although she commends that an effort was made, she believes the action plan will be a waste of time. The City is entering a time when hard decisions will need to be made. And, she would like the workforce to feel like they can rely upon and count on Council. If Council goes with this plan as presented, then the one, loud clear message that Council would not take action will hold true. The City should scrutinize the low marks as much as we are praising the high marks. It is clear that we have two departments that are led inefficiently. The workforce is very unhappy and adopting this plan would be doing a disservice to our workforce.

Council Member Cheryl Palmer said that the two things that jumped out at her were that the employees believe the survey was not very useful and that the City will not take action. That shows a low level of confidence in Council and upper management of the City. Mrs. Palmer stated that she won't vote for the action plan. She recommended the City Manager and Department Directors look at this as a tool to decide how they can better work with their staffs and individual departments. Mrs. Palmer pointed out that the Fire Department showed the greatest degree of dissatisfaction.

In summary, Mrs. Palmer said that she feels Council should have been more involved in formulating the survey questions rather than being asked to simply choose sets of questions. Council Members should have taken suggestions from some of our employees as to what questions should be asked.

Council Member John Thomas disagreed and said that, to a degree, he believes the survey identifies issues that needed to be addressed. Prior to this, a citywide survey had not been conducted. This Council has been proactive in trying to find out the problems by asking the employees. Steps have been taken and staff is saying they will address what they learned from the survey.

Mr. Thomas stressed that denying the action plan says that Council is not going to take any action. Council should accept the plan and allow staff to address these issues. If things aren't corrected, then Council should take measures from that point forward.

Council Member Richard Contreras said that any survey by design is not meant to be a panacea of all surveys. There will always be some semblance of dissatisfaction in the sense that you are not going to please everyone. If Council does not implement an

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action plan, we would have a self-fulfilling prophecy. Therefore, Mr. Contreras said he plans to support the action plan.

Mrs. Corby said she doesn't want to be 100% negative on the results; however, she believes the action plan presented could use assistance. She added that she would like to make suggestions.

Mayor Goode ruled that Mrs. Corby is out of time.

Moved by LaRusso/Palmer to provide Mrs. Corby with an additional five minutes. Motion carried unanimously.

Continuing, Mrs. Corby said that instead of the Department Directors setting up initiatives or putting forth ideas, she would like for the front line/ground floor employees to be considered. Focus groups should incorporate the front line employees – the people who are doing the jobs. The Department Directors should be left out of that step of the action plan. This would provide the workforce's perspective and approach.

Moved by Corby/Thomas to approve the employee survey action plan for improvement with direction that the focus groups would come from front line employees and not Department Directors.

Mr. Contreras asked if staff has questions about the motion or its implementation. He pointed out that when teams get together clearly there has to be some semblance of leadership, rules, and guidelines as you proceed with a "get well plan." At some point, the output and recommendations have to be forwarded to the leadership team.

Mrs. Elliott clarified that "working with the Department Directors" will establish the plan. The intent was not to have the directors solely comprise the focus groups. It was staff's intent that focus groups would be comprised of leadership and the employees in the department. Obviously there wouldn't be communication if only one level is doing the communication; there needs to be a complete loop. Work groups and focus groups consisting of different levels and tiers of employees would be facilitated by a professional to ensure that the issues are accurately communicated. This effort would be in addition to training.

Mr. Contreras said that the devil is in the details and the process will determine whether the outcome is value added or not.

Mrs. Elliott agreed and said that this will take time; it will be a process. In terms of survey usefulness, she encouraged Council Members not to take it to heart that the employees don't have faith in Council. She stated that she believes they do; however, they've never had a survey before. Therefore, the attitude is, "Show me." An action plan will show employees that we are listening to them and we want to move forward with the comments that have been made.

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Mrs. Elliott referenced Council Member Corby's comments and stated that she came away from the survey with completely different results. Mrs. Elliott reported that she spoke with Dr. Hull who conducted the survey and learned that our grades – if you want to call them grades – are very high. Additionally, they weren't meant to be an academic scoring system or grade. It is a rating scale of 1-10. We had scores of 8-10, which is very high in a number of categories. It is remarkable that five of the seven categories – performance evaluation, leadership, work climate, teamwork and high standards of excellence – had significant majorities where scores were 8-10. That indicates our employees are very satisfied with their jobs.

Continuing, Mrs. Elliott said that eight questions related to work climate. That category was not just limited to, "I like my job." Employees were asked to score if they felt comfortable working with their supervisors and if they were getting the training and professional resources needed to do the job.

Mrs. Elliott concluded by saying she feels really good that we got a lot of useful information out of the survey. Staff will learn from this survey, improve upon it and make it better as we go. This is the first survey and the City received phenomenal results. We also found that there are clearly areas we have to work on. Those are specifically identified and a report is included in the agenda package highlighting functional workgroups and the categories that need help. Those are the areas we are going to focus on.

Mr. Thomas asked if the narrative comments have been categorized. Mrs. Elliott replied that is partly done. The comments are all over the place and it is difficult to tabulate. Mr. Thomas said that obviously some of the comments were made out of frustration and may not be useable; however, there were quite a few that he thought were perceptive and he wants to ensure that part of the survey won't be minimized or discarded. Mrs. Elliott confirmed that the comments are being taken under consideration.

The question was called. The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

14. COUNCIL ACTION RE: Contract award for a waterline upgrade from Turtle Mound Road, Grand Haven Subdivision to Post Road, Project No. 30607, Young's Communication Company, Inc., Melbourne, FL - \$299,796.

City Engineer Jenni Lamb was available for questions.

Moved by LaRusso/Meehan for approval of the construction contract with Young's Communication Co., Inc. in the amount of \$299,796 for the Turtle Mound Road Waterline Upgrade. Motion carried unanimously.

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15. COUNCIL ACTION RE: Contract award for the renovation of Lift Station 29, Project No. 30306, Timothy Rose Contracting, Vero Beach, FL - \$286,153.50.

Mrs. Lamb was available for questions.

Moved by Contreras/Thomas for approval of the construction contract with Timothy Rose Contracting, Inc. in the amount of \$286,153.50 for the Lift Station 29 Renovation at Aurora/Marywood. Motion carried unanimously.

16. COUNCIL ACTION RE: Change Order No. 1 to the contract for mechanical upgrades at Reverse Osmosis Raw Water Pump Stations 1, 2, and 3, Project No. 31406, HM² Mechanical & Specialty Contractors, Titusville, FL - \$54,622.66; and a time extension of 167 days.

Mrs. Lamb was available for questions.

Moved by Thomas/Palmer for approval of Change Order #1 in amount of \$54,622.66 to HM² Mechanical and Specialty Contractors for the RO Pump Stations 1, 2, and 3 Mechanical Upgrades. Motion carried unanimously.

17. CONSENT AGENDA:

Moved by Palmer/Meehan for approval of the consent agenda. Motion carried unanimously.

- a. Approval of a Right-of-Way Use Agreement between the City of Melbourne and Jesse J. Alfrey, allowing the owner to fence a portion of Hayes Court; and authorization for the City Manager to execute the agreement.
- b. Purchase and installation of fire sprinkler systems for six fire stations, Life Safety Systems, Inc., Port St. Lucie, FL - \$116,060.
- c. Purchase of four vehicles, Alan Jay Buick Pontiac GMC, Sebring, FL - \$26,849; and Duval Ford, Jacksonville, FL - \$80,673.
- d. Purchase of a replacement 10 HP tank mixer and mounted pedestal for Water Production, Philadelphia Mixing Solutions, Palmyra, PA - \$43,085.
- e. Purchase of Pulsar® chlorinating briquettes for the Lipscomb and Sherwood swimming pools, Commercial Energy Specialists, Inc., Jupiter, FL - \$17,500.
- f. Purchase of rescue tools and accessories for Fire Operations, Fisher Fire and Emergency Services, Suwanee, GA - \$16,971.80.

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- g. Purchase of five Jaguar P1750 Provoice portable radios and accessories for Police Operations, Communications International, Inc., Vero Beach, FL - \$16,584.10.
- h. Purchase of 32 Dell OptiPlex 740 Computers from State of Florida contracted vendor to be installed at various City department/division locations, Dell Computer Systems, Round Rock, TX - \$26,254.72.
- i. Approval of an agreement between the City of Melbourne and Oceanside Village Homeowners' Association authorizing the Melbourne Police Department to patrol and provide traffic enforcement on private streets within the Oceanside Village Subdivision.
- j. Approval of a Mutual Agreement to Rescind Prior Contract between the City of Melbourne and Ulbricht & Blazik Land Developers, LLC, relating to the provision of water services to a certain property and annexation of the same property.
- k. Approval of an agreement between the City of Melbourne and Land Design Innovations, Inc. to provide for Historic Preservation Services in an amount not to exceed \$25,000; and authorization for the City Manager to execute the agreement.
- l. Approval of a Design/Build Utility Agreement between the City of Melbourne and the Florida Department of Transportation for construction of a privacy wall along the south side of the Pineda Causeway and authorization for the City Manager to execute the agreement.
- m. Lien Rescission CE 02-036: Approval of request for a lien reduction from \$7,700 to \$4,000 if paid within six months. (George Crawford - 1104 Gainey Drive)
- n. Resolution No. 2071: A resolution establishing an application, permitting and inspection fee for permits relating to dog-friendly dining in accordance with Ordinance No. 2007-99.

18. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

19. RESOLUTION NO. 2072: (Public Hearing) A resolution adopting the 2008 Evaluation and Appraisal Report.

Cindy Dittmer, Planning and Economic Development Director, briefed Council. The following is an excerpt from the agenda report: *The Comprehensive Plan is the long range planning tool for the City of Melbourne. It was adopted under the authority and requirements of the Local Government Comprehensive Planning and Land Development Regulation Act of 1985, as amended, Chapter 163, Florida Statutes. The Evaluation and Appraisal Report (EAR) evaluates how successful Melbourne has been in addressing major community land use planning issues through implementation of its Plan. Based on*

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this assessment, the EAR suggests how the Comprehensive Plan should be revised to better address community objectives, changing conditions and trends affecting the community, and changes in state requirements.

The proposed EAR is an actual evaluation of the policies and information found within the Comprehensive Plan. After adoption by City Council, the EAR will be transmitted to the Department of Community Affairs (DCA). The DCA will review the EAR and issue a finding of sufficiency, pursuant to Florida Statutes. Once the EAR is found to be sufficient, the recommendations will be implemented through the Comprehensive Plan update process. This update process will be accomplished through a series of amendments to the Comprehensive Plan, which will need to receive City Council approval.

The Planning and Zoning Board voted 4 to 1 to recommend approval of the resolution to adopt the 2008 Evaluation and Appraisal Report and transmittal of the EAR to the Department of Community Affairs. The dissenting vote was due to the amount of review time provided to the Board.

Mrs. Dittmer introduced Pat Tyjeski, Land Design Innovations, Winter Park. Land Design Innovations prepared the City's Comprehensive Plan Evaluation and Appraisal Report.

Pat Tyjeski reported that the process started over a year ago with public and visioning workshops to obtain as much public input and participation as possible. The idea of the evaluation is not to assess the Comprehensive Plan, but to determine issues and priorities in the community. Based on the issues, the plan is reviewed to ensure we are heading in that direction.

Five major local issues were identified:

- **Mixed-Use Hubs and Corridors/City Identity**

Mixed-use hubs and corridors, City image, waterfront redevelopment, redevelopment and coordination with Airport activities. The recommendations include intensifying development in hubs and corridors; analyzing urban form and policies; including Community Redevelopment Agency goals in the Comprehensive Plan; and coordinating with Airport.

- **Neighborhood and Resource Protection**

Established neighborhoods, historic properties, and environmental resources. The recommendations include continuing use of neighborhood plans; focusing on integration of uses; historic resources update; energy and water conservation; and cross-jurisdictional coordination.

- **Recreation and Open Space**

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Level of service, greenways and trails, and waterfront. The recommendations include updating level of service standards/methodology; defining open space; consolidating the Greenways, Blueways and Trails Plan with the Recovery Action Plan; and focusing on pedestrian connectivity.

- **Infrastructure**

Redevelopment and infill, transportation access strategies, environmental impacts, and urban service boundary. The recommendations include exploring transportation system management strategies for roadways; continuing coordination with Space Coast Area Transit; and increasing coordination with Airport regarding environmental impacts.

- **Affordable Housing**

Affordable housing strategies, neighborhood serving commercial, and services for the homeless. The recommendations include neighborhood plans; increasing coordination with local and state agencies and private businesses; providing transit connections and linkages with affordable housing projects and employment centers; and evaluating housing stock.

Ms. Tyjeski noted that each element of the plan was also analyzed. The general recommendations from that review include updating data and analysis; preparing a Public Schools Element; establishing an urban service boundary to plan for orderly expansion of boundaries; and strengthening coordination with adjacent jurisdictions within the service boundary.

That concluded Ms. Tyjeski's presentation. There were no questions from Council. Mayor Goode opened the public hearing. There were no comments, and the public hearing was closed.

Moved by Meehan/Corby for approval of Resolution No. 2072 (based upon the findings contained in the Planning and Zoning Board memorandum). Motion carried unanimously.

20. ORDINANCE NO. 2008-01 (Z-2007-1125) TURTLEMOUND POINTE: (First Reading/Public Hearing) An ordinance changing the zoning from C-P (Commercial Parkway) on 8.835± acres and M-1 (Light Industrial) on 0.565± acres to C-1 (Neighborhood Commercial) on the two parcels totaling 9.40±, located on the south side of Eau Gallie Boulevard, east of Sarno Road, and west of Turtle Mound Road. (Owner/Applicant - Turtlemound Pointe, LLC) (Representative - Matthew Soyka, P.E., Soyka and Associates, Inc.) (P&Z Board - 12/06/07)

Attorney Gougelman read Ordinance No. 2008-01. Mrs. Dittmer reviewed the item and located the property on the map. The Planning and Zoning Board voted unanimously to recommend approval of this request.

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Mrs. Palmer asked what is planned for the site. Mrs. Dittmer replied that the preliminary plat currently under review is for retail. She displayed on the map additional property to the north owned by the applicant.

Mrs. Corby asked if there will be one site plan or if it will be developed in different phases. Mrs. Dittmer replied that Council will review a 12-lot preliminary plat rather than individual site plans.

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

Keith Spina, representing the applicant, explained that the site will most likely include a national bank, daycare chain, and flex use for retail/office. They also envision a hotel, fast food and/or additional retail on the property.

Robbyn Spratt, civil engineer for the project, was available for questions.

The Mayor closed public hearing.

Moved by LaRusso/Contreras for approval of Ordinance No. 2008-01 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

21. ORDINANCE NO. 2008-02 (A&V NO. 263): (First Reading/Public Hearing) An ordinance vacating a portion of excess right-of-way as created by the former dead-end cul-de-sac of North Drive. (Industrial Plaza Unit Two Subdivision - 600 North Drive)

Mr. Gougelman read the ordinance by title. City Engineer Jenni Lamb pointed out that North Drive originally was a dead-end road with a 100-foot wide cul-de-sac at the north terminus. North Drive was extended north to Sarno Road as part of the North Drive Industrial Plaza plat. An excess or bulge in the right-of-way remained from the previous cul-de-sac. The applicant is requesting that the excess be vacated. A 66-foot wide right-of-way will remain, which is consistent with the right-of-way width north and south of the proposed vacation.

Attorney Gougelman proposed the following amendment to Section 1 of the ordinance:

SECTION 1. That a portion of a 50' radius cul-de-sac right-of-way (100' diameter) known as North Drive, as recorded in Plat Book 26, Page 104 (Industrial Plaza Unit Two), Public Records of Brevard County, Florida, is hereby vacated. The actual real property to be vacated is described on the two-page Attachment "A", a copy of which is attached hereto and incorporated herein by this reference.

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

Moved by Contreras/Meehan for approval of Ordinance No. 2008-02 (with the revisions recommended by the City Attorney). Motion carried unanimously.

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22. ORDINANCE NO. 2008-03 (A&V NO. 305): (First Reading/Public Hearing) An ordinance vacating a 2' x 7' triangular portion of the public utility easement along the east side of Lot 58. (The Arbors at Longleaf Subdivision - 3124 Arden Circle)

Attorney Gougelman read Ordinance No. 2008-03 by title. The public hearing was opened and closed with no comments from the audience.

Attorney Gougelman proposed the following amendment to Section 1 of the ordinance:

SECTION 1. That a portion of a 7.50-foot Public Utilities and Drainage Easement located along the eastern property line of Lot 58, The Arbors at Longleaf Subdivision, as recorded in Plat Book 55, Pages 66 – 68, Public Records of Brevard County, Florida, is hereby vacated. The legal description of the area to be vacated is described as follows:

Commence at the southeast corner of said Lot 58; thence run northeasterly along the right-of-way of Arden Circle (50' R/W) for a distance of 7.50 feet more or less to a point, said point being the intersection of the right-of-way of Arden Circle and the west line of a 7.50-foot Public Utilities and Drainage Easement (per plat); thence run N52°48'19"E, for a distance of 33.76 feet to a point, said point being the Point of Beginning; thence continue N52°48'19"E for a distance of 11.99 feet; thence run S37°00'40"W for a distance of 11.54 feet; thence run N52°59'20"W for a distance of 3.26 feet to a point, said point being the Point of Beginning. Containing 18.81 s.f., more or less.

Moved by Thomas/LaRusso for approval of Ordinance No. 2008-03 (with the revisions recommended by the City Attorney). Motion carried unanimously.

Recessed: 7:51 p.m.
Reconvened: 7:56 p.m.

23. COUNCIL ACTION RE: Consideration of a request by residents in the area of the proposed Parkway Place Apartments to adopt special rules of procedure for approval of the proposed site plan.

The following is an excerpt from the agenda report: *The attorney representing a number of the homeowners' associations located near the proposed Parkway Place development has proposed quasi-judicial hearing rules of procedure. He believes that these rules would be good rules for any quasi-judicial proceeding, but he specifically would like to see them made applicable to the Parkway Place site plan hearing scheduled for January 22.*

The City Attorney has circulated the proposed rules to attorneys for the applicant for their comment.

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The City Attorney makes no recommendation at this time for disposition of this item, although he points out various alternatives that the City Council has, including: adopt the rules and apply them to all quasi-judicial hearings; adopt the rules and apply them only to the Parkway Place hearing; adopt some of the rules but not all of them; or deny the request to adopt the rules.

Attorney Gougelman reported that he has been speaking with Cliff Repperger, one of the attorneys representing the applicant, and Tom McIntee, the attorney representing the Weston Village Homeowners' Association. Mr. McIntee has proposed rules of procedure for Council's consideration. Both individuals have indicated they need to prepare a record for court review. They are both attorneys that have been asked to represent clients with opposing views on this project. Given the fact that they are preparing a record for possible court review, concepts of constitutional due process come into play.

Concerns have been raised about whether Council would like to adopt rules at this time. It might be appropriate to have rules for quasi-judicial proceedings, but it would probably take a little longer to work through that process. The easiest way to deal with this application and satisfy everybody's needs would be informal consensus by Council to agree on a couple of points to extend to individual's on both sides of the issue.

The issues are: 1) How much time will be allocated for presentation by Mr. McIntee and objectors he is representing? How much time will be allocated to the applicant? How much time will be allocated to individuals represented by no one who may wish to comment? 2) Should witnesses be sworn in and placed under oath? 3) Should whoever is opposing a witness have a right to cross-examine?

Mr. Gougelman stated that these seem to be the key issues and if Council wishes, he can cut to the core of this and informally agree to set up a framework that would take care of these three issues. Therefore, he would suggest the following:

Mr. McIntee and the objectors that he represents would be accorded up to one hour to make their presentation. The applicant would be accorded up to one hour to make its presentation. Mr. McIntee would be afforded the opportunity to cross-examine any witness. The applicant would be afforded the same. The time for cross-examination would not be subtracted from each side's one-hour presentation. Citizens who aren't affiliated with anybody who wish to speak to Council would fall under the normal five-minute rule in the Code. All witnesses would be placed under oath.

Attorney Gougelman concluded by saying that this would probably satisfy everybody.

Mayor Goode said that this City has been operating under its Charter for close to 40 years. We've had numerous controversial issues come before Council on zoning matters and site plan approval. He asked for insight as to why two and one-half to three hours will be needed to conduct a hearing on this site plan.

Attorney Gougelman explained that the concept of a quasi-judicial proceeding is now firmly in place as far as the courts are concerned. The emotions, feelings and the

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investment over this project – on both sides – have become so strong that organized groups on both sides have taken the extra step of hiring lawyers. They want to build a record for court review.

When a court determines whether the decision Council made with regard to the site plan should be upheld or overturned, it will look at the record of what happens before the City Council. Neither side will have an opportunity to bring in additional evidence in that regard to the court. If they want to make a record, present evidence, and have people testify, it will have to be done during the Council meeting. Otherwise, on that narrow issue, they won't have an opportunity.

Since they are preparing a record, Council needs to extend a reasonable amount of time. It is a case-by-case decision that is up to Council. The attorneys for the applicant have told us they need up to one hour. In order to be fair, we recommended each side be accorded one hour. The key is to make sure everyone is treated fairly and that Council has a chance to look at everything being presented.

Mrs. Palmer asked what our position would be if we apply these rules only to this site plan. She asked if Council would need to apply these rules to all quasi-judicial proceedings. Attorney Gougelman replied that some jurisdictions are moving in the direction of adopting rules of procedure for quasi-judicial hearings. After this process, Council may wish to direct staff to draft procedures. This would allow them to be considered at Council's leisure rather than on the fly.

Mr. LaRusso asked if these changes would benefit either side and if it would stack the deck for one group or another. Attorney Gougelman replied that the changes would set up a level playing field, address due process, and make sure both sides get an equal chance to be heard.

Council Members LaRusso and Contreras commented that they do not have concerns with the amount of time required to properly conduct the hearing.

The City Manager pointed out that the hearing appears as if it will be a minimum of three hours. It is scheduled on a regular meeting agenda; therefore, Council may wish to consider an alternate date to move this to, if everyone agrees, or a secondary date to continue the hearing to after a two-hour timeframe. Otherwise the regular business on the agenda may suffer.

Mrs. Corby asked if we have an idea about the amount of time that will be needed for cross-examination. Attorney Gougelman replied no; however, his guess is five to 15 minutes per side. Mrs. Corby said that she does not think it would be to Council's advantage to dissect the hearing; to start it and then postpone it again. She asked if the City Manager could review the items on the January 22 agenda and remove any that are not time sensitive.

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Mrs. Palmer agreed that the hearing would need to be conducted in one sitting, however long that may take. Following discussion, she recommended that the January 22 meeting be started one hour earlier.

Cliff Repperger, 1800 West Hibiscus Boulevard, representing Parkway Place Apartments, said that it would not be beneficial to have a bifurcated meeting; it should be played out at one time. With regard to moving the hearing to another date, he said that he has not been able to speak with the applicant today about that issue. He pointed out that they have asserted their desire to be heard as soon as possible on this item. Therefore, he doesn't know if he can agree with postponing to another date; however, if it is a reasonable extension, he does not believe the applicant would object. Attorney Repperger informed Council that the applicant is in agreement with what Mr. Gougelman has proposed.

With regard to cross-examination, he said that typically that occurs when the witness is on the stand. However, he doesn't believe that style would play out well in a public hearing context. The applicant has suggested that they be allowed to complete their presentation in its entirety and then make the witnesses available for cross-examination. That might make for a better flow rather than stopping the presentation in the middle to cross.

Mr. Repperger said that they have not addressed rebuttal. After the applicant makes its presentation, Mr. McIntee makes his presentation, and the public comments from the audience, the applicant would like to give rebuttal. That would conclude input from the public. They do not want a back and forth on rebuttal and would request any further presentation from the objector be in the form of a brief closing.

Attorney Gougelman stated that it needs to be clear that rebuttal is not an opportunity to bring up new issues. It would simply be a chance to rebut on what has been presented.

Mrs. Corby said that she is assuming each side would be allowed closing remarks. She asked Mr. Repperger how much time he would need. Mr. Repperger replied that he doesn't believe they would need more than 15 minutes for rebuttal. Attorney Gougelman displayed concern with this answer.

Mrs. Corby said she is trying to establish a timeframe and Mayor Goode replied that at least three hours will be needed. Mrs. Corby asked about any advertisement costs involved if the meeting date were changed.

Mr. Repperger said that apparently the comment about "15 minutes for rebuttal" did not go over well.

Attorney Gougelman confirmed that a site plan does not require a legal advertisement. The agenda will be posted to satisfy the Sunshine Law requirements.

Regarding rebuttal, Mr. Gougelman said that Council is affording a flexible amount of time for each side and for people who have nothing to do with either side. The applicant

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should be allowed to rebut or sum up. It is up to Council to decide whether Mr. McIntee will be afforded the same. He concluded by saying he believes a 15-minute rebuttal is a bit much.

Mrs. Corby asked Mr. Repperger what he believes would be a reasonable timeframe if Council delayed hearing this item by itself on another date. Mr. Repperger replied that within a two-week period would be reasonable.

Mr. Thomas suggested the following: The January 22 meeting be started early; this issue should be placed on that agenda; the agenda should be cleared of as many items as possible; all other business should be addressed first; and then the remainder of the evening should be dedicated to addressing this item.

Mrs. Meehan said she agrees with conducting the hearing on this item on January 22.

Mr. McIntee informed Council that he was counting on a 6:30 p.m. meeting time. He will be in court that day and it will be difficult to arrive by 5:30 p.m. Mr. Schluckebier clarified that the idea is for Council to schedule other business on the agenda earlier. This issue would not be heard until after 6:30 p.m. Mr. McIntee concluded by saying that he would be fine with delaying this item two weeks.

Mayor Goode recommended that this item be placed at the end of the agenda so people will not have to sit in the Chamber all night waiting for all other business to be concluded.

Mr. McIntee stated that he doesn't have a problem foregoing rebuttal; however, he does have concerns about the mode of cross-examination. He is used to a witness being sworn, giving testimony, and then cross-examination. When cross-examination is remote, it makes it difficult for the decision maker to remember the testimony. His preference would be to stay with the normal cross-examination format employed in judicial proceedings.

Continuing, Mr. McIntee said he does not want to waive the opportunity to cross-examine individuals from the public who make comments. He doesn't believe this will take an inordinate amount of time, but it should be addressed. He noted that the final matter relates to his desire to have a principal from the applicant available to answer questions regarding their project, approach, decisions and findings. He would like for it to be someone who participated in the decision making process on this project.

Mr. Contreras said he would be more inclined to have cross-examination at the point a witness concludes testimony rather than having a delay. Mrs. Palmer agreed and added that she doesn't think individuals speaking during the public hearing (not affiliated with either side) should be cross-examined. Either side can address what the public brings up when closing remarks are made.

In response to the Mayor, Mr. Repperger said he can't rule out that they may want to ask someone making public comments a question. He added that he can't imagine they

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would engage in a cross on each speaker. Mr. McIntee added that he would cross someone from the public if they had something germane to say.

Mrs. Corby said she is concerned about members from the public not being aware of cross-examination. Mayor Goode agreed and said they would be spared; however, they should be placed under oath. Mrs. Palmer asked for Attorney Gougelman to comment.

Attorney Gougelman advised that there should be right of cross-examination by Mr. McIntee or Mr. Repperger of members of the public because the idea is that this is not government by applause meter. This process is to draw out what the facts are. He added that the concern may be that a citizen will make a comment and then be harangued by some out of control attorney. Attorney Gougelman stated that he does not believe that will happen based on the professionalism of the folks involved.

Continuing, he asked Council to focus on the following key points. The City Council Members will be sitting as judges. As the “judge” Council has the right to control the proceeding. If someone gets out of line, Council has the right to call him or her down. He added that if he were the attorney, he would be concerned about putting his best foot forward to cajole the judge into supporting his opinion.

A brief discussion followed on when the cross examination should be conducted – immediately after the witness speaks or at the end of the presentation. Attorney Gougelman offered that the key is to allow cross-examination.

Mrs. Palmer asked Mr. Gougelman to comment on the swearing in of witnesses. Attorney Gougelman said that the courts have looked at the issue of whether witnesses at a quasi-judicial hearing need to be sworn in. They do not; it is optional. He added that he would recommend it because it adds to the solemnity of the proceeding. It will also help people recognize that this is less of an opinion proceeding and more of an evidentiary hearing.

Discussion continued about the process. Mrs. Corby said she believes the only item remaining that is unclear relates to the procedure for cross-examination. She added that she likes Mr. Contreras’s idea (to cross examine immediately after the witness gives testimony). Mrs. Corby asked for the two attorneys to comment.

Mr. Repperger said he offered a suggestion; however, he does not believe they would strenuously object if the cross-examination is conducted after a witness provides testimony, although in this setting he has found that to be confusing and disjointed. Mr. McIntee said he believes it would be easier to cross after the witness gives testimony.

Mr. McIntee asked if Attorney Gougelman could memorialize the process in a memorandum and Attorney Gougelman replied yes.

Mr. LaRusso asked if in the interest of time all witnesses could stand and be sworn in at the same time. Attorney Gougelman replied that it probably wouldn’t save a lot of time, but it can be done.

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Discussion followed regarding the time the Council meeting would begin. By consensus, Council agreed to start the meeting at 5:30 p.m. and place all other business in front of the Parkway Place site plan.

Mayor Goode asked Attorney Gougelman to summarize what Council has agreed to. Attorney Gougelman provided the following outline: The Planning and Economic Development Director will provide a brief presentation. The applicant will have up to one hour to make a presentation. Attorney McIntee will have up to one hour to make a presentation. Individuals from the public will be heard and the traditional five-minute rule will apply. The applicant will be given a brief opportunity for rebuttal/summation. During the presentations, all witnesses will be sworn. As we move through the process, each side will have an opportunity to cross-examine when a witness completes his/her testimony. The time required for cross-examination will not be subtracted from either side's one-hour presentation. The general public may be cross examined if either side feels there is a need, recognizing that this will be done charitably and only as necessary.

Attorney McIntee asked if he will have an opportunity to give closing remarks and Attorney Gougelman replied okay.

Mrs. Corby asked the Mayor to inform the public when this item is introduced that there is a potential for cross-examination.

Mrs. Palmer said that if the cross-examination will not be deducted from either side's presentation, someone should be designated to keep time. Mayor Goode agreed and said that staff will provide timers for this item.

Mayor Goode added that he would like for it to be clear that these procedures will apply only to the Parkway Place site plan.

Mayor Goode asked both attorneys if they were satisfied with what has been outlined. Attorneys Repperger and McIntee both nodded their heads in agreement.

Lee Jones, representing the James Landing Homeowners' Association, said he would forego his remarks until the January 22 meeting.

Moved by LaRusso/Contreras for approval of the recommended procedures (outlined above), which will apply only to the Parkway Place hearing scheduled for January 22. Motion carried unanimously.

Moved by Palmer/Corby to begin the January 22 meeting at 5:30, with this item appearing at the end of the agenda and direction to staff to clear the agenda of as many items as possible. Motion carried unanimously.

24. COUNCIL ACTION RE: Proposed legislative priorities for the 2008 Legislative Session of the Florida Legislature.

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Mrs. Elliott introduced the item and stated that the Brevard Legislative Delegation is scheduled to meet on February 27 to hear items of concern and issues that local government and citizens would like to present to the 2008 Legislature. Typically in the past, the City has provided a list of legislative priorities for our delegation to consider and sponsor and support during the legislative session. The agenda package includes a list of six priorities developed by staff. The recommendation is to approve the list of legislative priorities for consideration by the Brevard Legislative Delegation. She asked Council if it had any revisions or additions to the list.

Mr. LaRusso stated that he will move to deny this item in its entirety and call for the Mayor and each Council Member to submit to staff their perceived issues. For example, he doesn't see the dredging of Eau Gallie River on the list. And, he cannot support the Florida League of Cities legislative priorities in its entirety. He added that members should provide a list of two or three items. Mayor and Council should return to this item prior to the delegation's meeting on February 27.

Moved by LaRusso/Palmer to turn down the legislative priority list as submitted. Motion carried unanimously.

Moved by LaRusso/Palmer that Mayor and Council work with staff to identify priorities to be presented to the Brevard Legislative Delegation on February 27; and that the item return to City Council for approval.

Mr. LaRusso said he would prefer to see each member of Council provide the list of priorities rather than staff handing the Mayor and Council the list of priorities. He added that he does not mean any disrespect to staff.

Mayor Goode recommended that members look at issues that are Citywide and realistic given the budget restraints.

Discussion continued.

The question was called. Motion carried unanimously.

By consensus, Council agreed that the items should be submitted to staff no later than February 1 to appear on the February 12 City Council agenda.

25. COUNCIL ACTION RE: Approval of Fiscal Year 2009 Federal Earmarks and authorization for the City Manager to execute a 12-month contract extension for federal lobbyist services, Alcalde & Fay, Washington, D.C. - \$45,000.

The following is an excerpt from the agenda report:

The following projects are recommended as earmark requests for FY 2009:

Access Road to the Melbourne International Airport - A portion of the recent \$2.76 million earmarks will be used for the preliminary design and environmental study. The

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estimated cost for the project is \$70 million. Lobbying firm Alcalde & Fay recommends that the City continue to seek funding for subsequent phases including design, right-of-way acquisition, and construction. A request of \$5.0 million is proposed.

Police and Fire VHF Radios - *The recent \$133,950 earmark will fund a basic system that was defined by the Police Department. A request for additional funding to equip all police officers with VHF handheld radios and to provide handheld radios to each fire department vehicle is recommended. The request should also include mobile repeaters to be installed on all fire engines. A request of \$200,000 is proposed.*

Retrofit Downtown Storm Drains to Provide Treatment - *This project would involve construction of inline treatment equipment (e.g. in manholes) to treat stormwater that otherwise would discharge pollutants directly to the creeks and the Lagoon. Storm water treatment was not considered when these areas were developed many decades ago. A request of \$855,000 is proposed.*

Traffic Signalization - *This would be a request for new technology that can improve the flow of traffic on City streets. Video camera detection at intersections and fiber optic lines for communicating traffic information to a central control system are proposed. The request would also include emergency traffic signals at fire stations 77 and 78. A request of \$1,232,000 is proposed.*

Airport Traffic Control Tower - *Although there was no funding for control towers last year, Alcalde & Fay recommends keeping this project on the list. A request of \$8,000,000 is proposed.*

Deputy City Manager Howard Ralls reported that the City was successful in receiving funding for two projects. The City received funding approval of \$133,950 for a VHF radio system that will serve as a back-up to the 800 MHz radio system. Additionally, the City's funding request for an Airport access road from a new interchange on I-95 was included in what's described as the "Palm Bay Parkway." The total earmark amount for that item is \$2.76 million.

Mayor Goode stated that this is a pretty good return on a \$45,000 investment. Mr. Ralls agreed and said that is why staff is recommending renewing the contract for one more year. They were successful in obtaining two earmarks for the City and they more than paid for themselves. Additionally, he reviewed the five projects (outlined above) that staff is recommending to include as earmarks for the upcoming year.

Moved by Palmer/Meehan to authorize staff to proceed with submittal of this list of projects for funding as federal earmarks and authorization for the City Manager to execute a 12-month contract extension with Alcalde & Fay, Washington, D.C. - \$45,000.

Mr. LaRusso said he is trying to determine our rate of return. The City has spent \$90,000 on a lobbyist and has received funding of \$133,950.

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Mr. Ralls added that we have also received an earmark for the Airport access road from I-95 across Ellis Road to NASA Boulevard in a \$2.76 million earmark defined as the “Palm Bay Parkway.”

Mr. LaRusso stated that he is concerned about our tax dollars being spent on lobbyists, who are perceived as “evildoers.” He would like confirmation that we are getting our money’s worth.

Mr. Ralls confirmed that the City’s return is far greater than the cost for the past two years.

Mrs. Palmer commented that she would rather not have lobbyists; however, until everyone else stops having lobbyists, we will have to compete. She commented that the Palm Bay beltway will benefit this whole end of the County and a new interchange will benefit Melbourne a great deal. It looks like we are splitting the earmark with Palm Bay, but it is for a regional improvement. Therefore, she would describe it as cooperating with Palm Bay.

Mr. Ralls confirmed for Mrs. Corby that the City will be seeking federal funding for the projects outlined in the agenda package. The City would not receive federal funding for these projects without the efforts of our lobbyist.

Mayor Goode added that we are instructing Alcalde and Fay to go after these projects; however, it doesn’t mean we will receive earmarks for all five.

The question was called. Motion carried unanimously.

26. COUNCIL DISCUSSION RE: Consideration of an increase in the current flat monthly rate for reclaimed water; a requirement for meters to be installed on all new reclaimed water services; and establishing a monthly service charge.

From the agenda report: Current customer revenues provide only about one-tenth of the cost to produce and distribute reclaimed water. There is some justification for the utility system to subsidize a share of the cost because it benefits the water and sewer operations. However, reclaimed water has value and use to those customers who benefit from its availability.

The current rate is \$5 per month for a typical residential lot or other parcel under a half-acre. The 2007 Water and Wastewater Rate Study defined that a flat rate of \$9.12 would be needed to offset future system costs – and that assumed a customer base that would utilize and pay for all the reclaimed water produced.

The following basic changes are offered for Council’s consideration:

1. *Increase the flat monthly rate from \$5 to \$9 for existing residential customers.*

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At recommended watering rates, the typical residential subdivision lot will use an average of 16,000 gallons of reclaimed water per month. At \$9 per month, that fee is equivalent to a charge of \$0.56 per 1,000 gallons (by comparison, the cost of potable water is \$3.43 per 1,000 gallons).

2. *Require meter installations for all new customers. The meter would be remote-readable to be compatible with new potable water meter installations. The installation cost would be the same as for the water meter, e.g. \$250 for a standard ¾" meter.*

Due to that new cost, the new customer charge should be reduced from \$125 to \$50.

- 3a. *Establish a base monthly service charge for new customers to include a gallonage allowance for average consumption - \$8.00 per month.*
- 3b. *Establish a gallonage charge for consumption over the average monthly rate - \$0.50 per 1,000 gallons.*

If the average customer increased usage by 50% to 24,000 gallons in one month, the bill would be the base charge of \$8.00 plus \$4.00 for the extra 8,000 gallons used - for a total charge of \$12.

The recommendation is for Council to consider increasing the reclaimed water rates so that customers pay a fair share of the benefit they receive.

Mr. Ralls reviewed the agenda report and noted that approval of the recommendation would authorize staff to proceed with an ordinance.

The City Manager added that currently we have a flat rate, outmoded system that does not recover our costs. This would move us closer to cost recovery and, more importantly, advance the idea of meters for reuse. The flat rate encourages people to be water hogs with reuse water. In the future, St. Johns River Water Management District is going to require us to use a lot of reuse water, yet not allow people to use as much as they want. At some point it should be metered and the amount of use should relate to the size of the property.

Mr. Ralls commented that we do have some large developments coming on line that have been required to install reclaimed water lines, such as Mayfair.

Mayor Goode asked how much of the City is plumbed so we can transport reuse water to Mayfair. Mr. Ralls replied that the nearest line to Mayfair is near the Grant Street Plant. However, we have projects to increase production and distribution. Mr. Schluckebier clarified that bonds are funding projects to extend distribution lines. If Mayfair were built at this moment we could not deliver reuse, but in 18-24 months we will be in a position to do that.

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Mrs. Palmer asked if people will be required to connect to reuse once lines are installed in existing neighborhoods. Mr. Ralls replied that most of our reclaimed water would probably go to new development simply because of the cost to retrofit existing neighborhoods. Mayfair, for example, will be installing its own lines.

Mr. Schluckebier responded that nobody individually would be required to connect; however, developers putting in new subdivisions are required to run the lines. The City may require a developer to run lines; however, no one in that subdivision is obligated to take the reuse.

Mrs. Palmer said she is concerned about existing neighborhoods that have wells for irrigation and whether or not they would be required to connect in the next 10 – 15 years. Mr. Schluckebier replied that they would not. Presently, that is not being done with individual lot owners in new subdivisions; it's voluntary.

Mayor Goode called for a motion. Following a pause, the following motion was made:

Moved by Meehan/Thomas for approval.

Mayor Goode said if it is not Council's intent to vote for this item when the ordinance returns, then Council should not vote to instruct staff to prepare it.

The Mayor stated that the motion is to authorize staff to prepare an ordinance increasing reclaimed water rates. The question was called. The roll call vote was:

Aye: Contreras, LaRusso, Thomas, Meehan and Goode

Nay: Palmer and Corby

Motion carried.

27. COUNCIL DISCUSSION RE: Council policy regarding Council Members taking the lead in their district. (Authorized by Council - 11/27/07)

The following is an excerpt from the agenda report:

At the November 27, 2007 meeting, Council repealed its adoption of the Council policy relating to Council Members taking the lead on issues in their districts. At that time, Council requested a discussion item for the January 8, 2008 agenda. Council Member Mark LaRusso has provided the following correspondence regarding this issue:

"Council members will confer with the City Manager and City Attorney in regard to questions and/or concerns from constituents inside and outside of the district of which that councilmember has previously qualified for electable status per the City of Melbourne's Charter in regard to all pending quasi-judicial matters. No council member will conduct a public meeting or hearing without first reviewing all potential consequences

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to the City of Melbourne, its elected officials and the overall well being of the citizens of the City.”

Mr. LaRusso asked Council to disregard the title of this subject, “policy regarding Council Members taking the lead in their district.” He said that his intent was to simply have a discussion. Council may recommend a new policy or it may not. He explained that some of the comments he has received are that this issue relates to quasi-judicial matters. He is not recommending that anyone take the lead on items – that is something that occurs naturally in districts.

Mrs. Palmer thanked Mr. LaRusso for the suggestion. She pointed out that he is suggesting that Council Members confer with the City Manager and City Attorney in regard to pending quasi-judicial items. She added that this makes sense to keep us out of legal entanglements. Confer is not being ordered or being required to ask permission. The second part is that members would not conduct a public meeting or hearing without first reviewing all the potential consequences. This asks a member to do due diligence before holding a meeting.

Continuing, Mrs. Palmer stated that this has been stated wonderfully; it doesn’t tie anyone’s hands. It puts in writing some common sense procedures for Council to agree to follow. She will support this item.

Mr. Thomas asked if he would be required to “confer” if he receives a question or concern from a constituent on a quasi-judicial matter.

Mr. LaRusso replied that was not his intent. He intended for this to apply when there is a question or concern that would lead to a member considering conducting a public hearing. His thought is that should be vetted through the City Manager and City Attorney to see if there are any pitfalls for that Council Member. It’s self-protection and it doesn’t have to be a policy; it can just be a reminder.

Following discussion, Mr. Thomas made a motion to adopt a Council policy with respect to Mr. LaRusso’s suggestion as follows: No Council Member will conduct a public meeting or hearing on a quasi-judicial matter without consultation with the City Attorney reviewing all the potential consequences to the City of Melbourne, its elected officials and the overall well being of the citizens of the City.

There was no second to the motion.

Mr. LaRusso clarified that it should be “will not hold a public meeting prior to consulting with...” Council Members can hold all the public meetings they want, but they should first get the advice of staff.

Mayor Goode said that this is convoluted. Mrs. Palmer said she is having heartburn with the change of wording, which sets in stone a rule that a member has to go to the City Attorney. A member could choose to talk to another attorney. The idea is for the

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member to protect its quasi-judicial position, obey the rules of Government in the Sunshine. But a member doesn't need the permission of the City Attorney.

Mr. Thomas said the intent of his motion was not for a member to seek permission, it was that a member would confer first with the City Attorney before having a public hearing on a quasi-judicial matter. It doesn't mean you take his advice, it just means you are going to seek his counsel.

Mayor Goode asked the purpose of having a policy if Council is not required to take his advice. Mr. Thomas said that hopefully members would take legal counsel, but obviously each member can make his/her own decision.

Mr. Contreras recommended that instead of putting this in stone, the terminology should be "it is advised that you consult with the City Attorney..." He added that this is common sense and he would have done it anyway without a rule. But, if members are looking for a policy, he would be more inclined to support an advisory note.

Discussion continued. Mr. Thomas asked Attorney Gougelman to comment on the motion.

Mr. Gougelman said he subscribes to the view that it doesn't work well in a collegial format to make a rule that could be misinterpreted as a member being ordered to do something. If you are going to have a rule, the idea of encouraging or recommending is the better way to proceed.

Mr. Thomas discussed a possible amendment to the motion. Council verified that the motion has not received a second.

Mrs. Corby said that she would be more apt to support a statement that suggests seeking counsel by our City Attorney when conducting a public hearing and leave it at that. Adopting a policy at this point insinuates that something happened in the past and that advice was not sought from the City Attorney. She noted, for the record, that is not the case.

Continuing, Mrs. Corby suggested that this item be considered at a later date along with the other policies. She has reviewed all of Council's policies and perhaps revisions can be made to all. She asked Council to set this item aside and look at all the rules at a later date.

Mr. Thomas withdrew his motion.

Moved by Corby/LaRusso that this idea be removed from (consideration) and all the Council policies be brought forward at a later date.

The maker/seconded amended the motion by directing that a workshop meeting be held in the future that pertains specifically to Council policies. At that time Council will also incorporate a discussion on the quasi-judicial proceeding process.

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The question was called on the motion and the amendment. Motion carried. Mayor Goode voted nay.

28. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole, 805 East Palmetto Avenue, asked why Item 27 was not placed under unfinished business on the agenda. She encouraged Council to not consider a policy that would result in citizens being able to speak to only the Council Member in their district.

James Teele, 2442 Empire Avenue, referenced the abandon and vacate ordinance approved on his property, Ordinance No. 2007-65. He explained that the drawing he submitted for that request clearly showed that he planned to build in the area being vacated. However, he has now learned that he would need a variance from the (Zoning Board of Adjustment) to build in the setback. Mr. Teele discussed the fee he paid for the abandon and vacate request plus the fee required to apply for a variance. He explained that if he had known this from the beginning, he would have amended his plan so that building would not occur in the setback. He asked the City Council for assistance.

Following brief discussion, the City Manager said that the Planning and Economic Development Director and the City Engineer will review the issue. He added that Mr. Teele is asking Council to wave a magic wand and provide some adjustment to the setback requirements. Those are set in Code and approval of an abandon and vacate ordinance does not translate into a reduction in the setback requirements. The place to process his request for reduction in setbacks is not before City Council.

Discussion continued. Mrs. Palmer asked staff to determine if Mr. Teele was misled in any way during this process. She pointed out that in fill and redevelopment are goals in the Comprehensive Plan.

29. ADJOURNMENT

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

The meeting adjourned at 10:21 p.m.



City Clerk – 1/17/2008

Approved by Council: _____