

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 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 5:30 p.m. by Vice Mayor Kathy Meehan.

1. Pastor Ann Shedden-Wills, Crossroads Community Church, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Kathy Meehan	Vice Mayor, District 3
	Richard Contreras	Council Member, District 1
	Mark LaRusso	Council Member, District 2
	John Thomas	Council Member, District 4 (arrived 6:00 p.m.)
	Cheryl Palmer	Council Member, District 5 (arrived 5:34 p.m.)
	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

Absent: Harry C. Goode, Jr. Mayor (attending U. S. Conference of Mayors)

4. Proclamations and Presentations

Vice Mayor Kathy Meehan accepted an award on behalf of the City from Diana Canady, Treasurer, ABATE of Florida, Brevard County Chapter, for the City's participation in the December 2007 ABATE Toy Run.

Council Member Cheryl Palmer arrived at 5:34 p.m.

Vice Mayor Kathy Meehan announced that the applicant for Item 21 (Parkway Place site plan) has requested postponement until the April 22 meeting. She stated that, without objection, Council will postpone this item. (Note: Additional discussion on this occurred under Item 13.)

Council Member Richard Contreras said he does not have issue with postponement; however, he would like for the record to reflect that Council received a letter from the applicant's representative outlining the reasons for postponement.

City Clerk Cathy Wysor said that information can be included in the record (minutes).

5. Approval of Minutes - January 8, 2008 Regular Meeting

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

6. City Manager's Report

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Council Member Joanne Corby referenced the recent vote on the Fraternal Order of Police union contract. She asked the vote/count and why the membership rejected the contract.

City Manager Jack Schluckebier replied that although not all the members voted, it was substantially turned down. It is the City's understanding that the members are looking for clarification on a pension proposal. Additional discussions are planned with the FOP in the next few weeks and staff hopes to return the item to Council in the next 30 – 60 days. Mrs. Corby asked for a copy of the draft proposal that was presented to the membership.

Council Member Mark LaRusso asked the City Manager to provide more timely verbal updates on contract issues in the future.

7. Public Comments

Craig Waymire, 915 Sunset Drive, reported that he is concerned about the safety at Magnolia Avenue and U. S. 1. The intersection needs red flags, arrows, etc. informing drivers that the intersection is now right turn only. He reported that about 30% of the drivers are still turning left and about 10% of the drivers turn right and then make an immediate U-turn.

Following discussion, the City Manager said that the City Engineer will review the suggestions. He noted that there is often an issue on the best way to notify the public when a traffic control is changed.

Mrs. Corby referenced the intersection of Laurie Street and U. S. 1 and recalled that the Florida Department of Transportation recommended that section of Laurie Street become one-way only, which will impede businesses in the area. Mrs. Corby informed Council that she has been in contact with FDOT and they are willing to work with the City on the one-way issue; therefore, that determination is not final.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2008-01 (Z-2007-1125) TURTLEMOUND POINTE: (Second 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.) (First Reading - 1/08/08)

Attorney Gougelman read Ordinance No. 2008-01 by title. There were no comments from the public and no Council disclosures.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Moved by Palmer/LaRusso for approval of Ordinance No. 2008-01 based upon the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: Contreras, LaRusso, Palmer, Corby and Meehan

Motion carried unanimously.

9. ORDINANCE NO. 2008-02 (A&V NO. 263): (Second 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) (First Reading - 1/08/08)

Mr. Gougelman read the ordinance by title. There were no public comments and no disclosures by Council.

Moved by Contreras/LaRusso for approval of Ordinance No. 2008-02. The roll call vote was:

Aye: Contreras, LaRusso, Palmer, Corby and Meehan

Motion carried unanimously.

10. ORDINANCE NO. 2008-03 (A&V NO. 305): (Second 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) (First Reading - 1/08/08)

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

Moved by LaRusso/Palmer for approval of Ordinance No. 2008-03. The roll call vote was:

Aye: Contreras, LaRusso, Palmer, Corby and Meehan

Motion carried unanimously.

NEW BUSINESS

11. COUNCIL ACTION RE: Contract award for emergency repair and replacement of a failed stormwater pipe on Hickory Street, Project No. 64408, Atlantic Development of Cocoa, Inc., Cocoa, FL, - \$92,547.91; and transfer of \$106,430 from Project No. 64205 to establish this project budget.

Michelle Schoultz, Utilities Engineer, Public Works/Utilities, reviewed the agenda report.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Moved by Contreras/Corby for approval of contract award for emergency repair and replacement of a failed stormwater pipe on Hickory Street, Project No. 64408, Atlantic Development of Cocoa, Inc., Cocoa, FL, - \$92,547.91; and transfer of \$106,430 from Project No. 64205 to establish this project budget. Motion carried unanimously.

12. CONSENT AGENDA:

Vice Mayor Meehan referenced the memorandum from staff indicating that Item “e” has been removed from the consent agenda. The City Manager explained that the host government (City of Orlando) notified us of difficulties with the underlying bid and until they sort that out, the item needs to be delayed. Mr. Contreras asked staff to include information about a purchase option for the uniforms when this item returns.

The Vice Mayor reported that Council Member Mark LaRusso asked to remove Items “a”, “g” and “m,” and Council Member Joanne Corby asked to remove Items “b”, “g”, and “l.”

Moved by LaRusso/Contreras for approval of Items “c”, “d”, “f”, “h”, “i”, “j” and “k.” Motion carried unanimously.

- a. Purchase of three replacement vehicles, Duval Ford, Jacksonville, FL - \$54,386.
- b. Purchase of nine portable and three mobile 800 MHz radios for Fire Operations, Communications International, Inc., Vero Beach, FL - \$38,521.50.
- c. Approval of a 60-month lease for a Minolta BH750 digital copier/printer/scanner for City Hall, Copytronics Information Systems, Rockledge, FL - \$487/month; maintenance - \$112/month for 20,000 copies; and an excess copy charge - \$0.0052/copy; estimated total 60-month cost of \$36,876.
- d. Purchase of two Autopulse® non-invasive cardiac support pumps and accessories, ZOLL Medical Corporation, Chelmsford, MA - \$30,570.
- e. Contract award for rental of work uniforms, Aramark Uniform Services, Burbank, CA - \$27,656.25.
- f. Purchase of replacement office furnishings for the new D.B. Lee Administration building, Designers West Interiors, Melbourne, FL - \$19,121.49.
- g. Approval of a \$2,500 award in 2007-2008 Community Development Block Grant funds and \$2,500 in Hurricane Housing Recovery Program (HHRP) funds to the Fair Housing Continuum, Inc. to continue fair housing testing and authorization for the City Manager to execute the agreement and adjust the HHRP budget accordingly.
- h. Approval of a change to the Purchase Assistance with Sweat Equity Program Policy to eliminate the shared appreciation requirement.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

- i. Resolution No. 2073: A resolution approving the First Amendment to the Potable Water Service Agreement for Pelican Coast (to correct legal description) between the City of Melbourne and Patrick Family Housing, LLC; and authorization for the City Manager to execute the agreement.
- j. Resolution No. 2074: A resolution approving the First Amendment to the Potable Water Service Agreement for Coronado Pelican Coast (to expand water services to new phase of the development) between the City of Melbourne and Phoenix Community Developers, Inc.; and authorization for the City Manager to execute the agreement.
- k. Resolution No. 2075: A resolution authorizing the City Manager to submit a grant application to the St. Johns River Water Management District for funding in the amount of \$275,000 (with 50% local matching funds) through the Indian River Lagoon National Estuary Program for the Downtown Melbourne Retrofit for Treatment Phase I and II Stormwater Project; and authorization for the City Manager to execute all documents related to this grant.
- l. Resolution No. 2076: A resolution approving an amendment to the City's Local Housing Assistance Plan for State Fiscal Years 2008 through 2010 State Housing Initiatives Partnership funds to add a new Housing Assistance Strategy pursuant to Chapter 67-37, Florida Administrative Code; and authorization to submit the amended plan to Florida Housing Finance Corporation.
- m. Resolution No. 2077: A resolution implementing FY 2007-2008 First Quarter Budget Review recommendations.

13. ITEMS REMOVED FROM THE CONSENT AGENDA

- a. **Purchase of three replacement vehicles, Duval Ford, Jacksonville, FL - \$54,386.**

Council Member John Thomas arrived at 6:00 p.m.

Mr. LaRusso discussed pursuing a hometown bid provision in the City's purchasing regulations. He noted that it would allow the City to support a local business if the City received the same price or close to the same price on an item from bidders. Mr. LaRusso acknowledged that this future change would require Council approval.

Attorney Gougelman commented that, with a hometown bid provision, the City would automatically select the hometown bid if the bids received were equal. The courts in Florida have previously upheld the concept of a hometown bid process. Bids are almost never equal; therefore, the hometown bid provision is a feel good measure from a business policy standpoint.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Mr. LaRusso replied that he would like to meet with staff on this issue and return in the future. He added that it may be a feel good measure; however, there may be one time in the future where this provision would mean something to one of our local businesses.

The City Manager reported that the City has a practice of trying to stay local; that is added as criteria when possible. Our desire is to deal with hometown businesses first. However, with equipment and vehicles, there typically isn't a hometown bid. Very few dealers have a relationship with the manufacturer, which allows them to offer local government vastly lower prices compared to pricing that can be obtained by a local dealer.

A brief discussion followed regarding how a hometown bid provision would be implemented and applied.

Moved by LaRusso/Contreras for approval of Item "a." Motion carried unanimously.

b. Purchase of nine portable and three mobile 800 MHz radios for Fire Operations, Communications International, Inc., Vero Beach, FL - \$38,521.50.

Mrs. Corby noted that the information in the agenda package indicates these radios are replacement for outdated radios. She asked if the outdated radios are currently in use as part of the inventory or if they are out of service.

Fire Chief Paul Forsberg replied that many are still used as part of our inventory. Additionally, we don't currently have enough portable radios for spare units, which would be put into service during a hurricane.

Mrs. Corby asked if these radios will be added to our inventory and the Fire Chief replied yes.

Mrs. Corby asked the Chief to enlighten Council on the radio system re-banding agreement.

Chief Forsberg reported that the latest information is re-banding will occur in the next several months. Some of the department's radios can be re-banded and some can't. The ones that can't be re-banded will be replaced. We currently have three types of radios: radios that will be replaced; outdated radios that are reaching the end of their life expectancy, but can be re-banded; and the newer radios. The older models that aren't going to be replaced will be held in case we have problems with the ones that haven't reached their life expectancy. They can be used if we have to send others out for repair.

Mrs. Corby reported that as a result of a lawsuit between FCC and Nextel, Nextel is required to institute a one for one program. This means that any current radios in our inventory will be replaced with new radios. Chief Forsberg replied that is not totally correct.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Mrs. Corby continued and said that program starts at the end of this month and it goes until June or July 2008. She noted that she does not want to spend money now if we don't need to, unless we need to add to our inventory.

Chief Forsberg repeated that we need to add to our inventory. He explained that the models that can't be re-banded/reprogrammed will be replaced. Staff is not asking to replace those radios. The radios that are reaching the end of their life expectancy will be reprogrammed and those are the ones we are asking to replace; they will be set up with the new programming.

Mrs. Corby stated that Nextel is required to replace the radios that are in our inventory. Chief Forsberg said they are only required to replace the radios that cannot be reprogrammed.

Mrs. Corby said she is trying to help the Chief out. She would like to add to our inventory; however, she doesn't believe we need to spend money if those radios will be changed out, especially since the one for one program is required.

Mr. Schluckebier confirmed that there isn't a proposal on this agenda to spend any money on something that someone else will be buying for us. We are only proposing to spend money on things that have reached the end of their useful life but are programmable. Nextel would not have any obligation to replace them.

Mrs. Corby stated that she won't support this item.

Mrs. Palmer asked if the radios we are purchasing will require re-banding. Chief Forsberg responded that it depends on when they are purchased. If the order arrives after the re-banding, they will be put in with the newer frequencies. If it's before, they will be re-banded with all the other radios. The re-banding, which is scheduled to occur in the next three to four months, has been postponed three times.

Mrs. Palmer asked if these are necessary, new replacement radios and the others will be held in stock for emergencies. Chief Forsberg confirmed that is correct. Mrs. Palmer asked if we can wait three months. Chief Forsberg replied that the portables are needed right away because of problems. If necessary, we can wait on the mobile units.

In response to Mrs. Palmer, the Chief described the process of reprogramming and confirmed that the radios would be out of commission for 30 minutes or less for the re-banding process.

Following brief discussion, Mr. LaRusso recommended that Council hold off until the next meeting to allow time for the City Attorney to provide a written opinion on the Nextel lawsuit. Discussion continued.

Mrs. Corby informed the audience that her input on this item came from her husband, who is a Fire Chief. She added that it was recently announced that the one for one program will be started in Brevard County at the end of this month and Nextel will replace

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

the radios that cannot be re-banded. The Fire Chief confirmed that the radios that can't be re-banded will be replaced.

Discussion continued.

Moved by Corby/LaRusso to postpone this item until the February 12 meeting.

Attorney Gougelman asked the nature of the opinion Council is seeking. Mr. LaRusso said he would like to know – in plain talk – what the Nextel lawsuit means, what is being replaced, and what is not.

The question was called. Motion carried. Mr. Thomas voted nay.

At this point, Council discussed Item 21, Parkway Place site plan:

The Vice Mayor announced that a few people in the audience have asked about the Parkway Place site plan. She noted that Item 21 has been postponed until the April 22, 2008 meeting.

Mr. Contreras questioned whether Council considered that item for actual postponement. Attorney Gougelman said that (at the beginning of the meeting) the Vice Mayor said the item would be continued "without objection," which was a call for objection/discussion if there were any problems. Mr. Contreras said he mentioned that he wanted to hear from the applicant the reasons for postponement. He stressed that he wanted that for the record, not for discussion purposes. Mr. Gougelman said that will be hard to do because the applicant and their attorneys have already left. Mr. Contreras asked if the letter could be read into the record.

Mrs. Corby said she did not hear that Council voted to postpone Item 21 or move the item forward on the agenda. She added that she heard the announcement; however, she does not believe a vote was taken.

Attorney Gougelman said that the action was handled by consent. When something is presented "without objection," it is a call for the action to stand unless another member raises an objection, wants to discuss the item, wants to take a vote, etc. When no one objected, the Vice Mayor moved on. And, at that point the Parkway Place attorneys got up and assumed that Council had continued the item until April 22.

Mrs. Corby asked Mr. Gougelman if there was a reason he (Gougelman) didn't make some type of directive and if he is Council's parliamentarian. Attorney Gougelman replied that he is not Council's parliamentarian. He added that the action taken is an acceptable procedure under Roberts Rules of Order; it is typically used for handling a procedural issue.

Mr. Contreras said he would be satisfied if the letter from the applicant's attorney could be read into the record. By consensus, Council agreed to read the letter into the record after the consent agenda items are complete.

- g. Approval of a \$2,500 award in 2007-2008 Community Development Block Grant funds and \$2,500 in Hurricane Housing Recovery Program (HHRP)**

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

funds to the Fair Housing Continuum, Inc. to continue fair housing testing and authorization for the City Manager to execute the agreement and adjust the HHRP budget accordingly.

Mr. LaRusso referenced the agenda material and said it looks like we have been testing in excess of 10 years. Testing consistently supports that discrimination against persons with disabilities, race/color, etc. are the most frequently reported complaints in fair housing. Eight tests were performed in 2004-2005 and 20 tests were funded in 2005-2006 and 2006-2007. He stated that since we know there is discrimination in fair housing, the \$5,000 should be spent on a fair, affordable, and low-income housing education program.

Staff confirmed for Mrs. Corby that HHR funds and HHRP funds are one in the same (Hurricane Housing Recovery Program).

Mrs. Corby referenced the 20 test kits that the funding would provide and asked what we are testing for and who is going to be the beneficiary of the tests.

Housing and Community Development Director Melinda Thomas replied that the Fair Housing Continuum has been conducting the tests over the last three years for the City, and there is no beneficiary. Over time we will have a substantial body of data that we can draw conclusions from. She explained that the 10-year history referenced by Council Member LaRusso relates to complaints that went to the Fair Housing Continuum. Based on the pattern of complaints, the Continuum determined where discrimination was most likely to happen.

Continuing, Mrs. Thomas reported that the Continuum delivered an education program for several years. It isn't a very exciting topic and people did not show up simply because we asked them to attend. The cost was about \$600 per class and mostly staff was in attendance. Everyone involved thought testing would be a better use of our funds. As a consortium, we can gather a sufficient body of data that will tell us something about the condition of fair housing compliance. That is the track we have been on over the last three years. This will be the fourth year of testing.

Mrs. Corby asked what the tests determine. Mrs. Thomas explained that the tests determine discrimination in housing against persons with disabilities. It's targeted strictly for that in rental housing only.

Mrs. Thomas continued and stated that the City commits and certifies to HUD through our CDBG program, that we will affirmatively further fair housing. We have to take specific action; however, the kind of action is up to us. She elaborated on how the testing is conducted with a control tester and a target tester. The idea is to target the apartment complexes that have been found deficient and talk to the management and owners about the issues. The goal is compliance.

The Fair Housing Continuum would like for the City Council to support actions that will be taken. We have a choice of educating specific apartment owners, sending them letters,

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

and using a progressive discipline approach. If violations are repeated, then a formal complaint can be filed with the federal agency that has jurisdiction.

Mrs. Corby said that the 10-year data collection we had, technically we can't use that data. Mrs. Thomas repeated that the 10-year history previously referenced relates to complaints received by the Fair Housing Continuum.

In response to Mrs. Corby, Mrs. Thomas confirmed that the Consolidated Plan governs the federal dollars the City receives. Testing is being done in compliance with the federal requirements for the CDBG and HOME program. This is being funded with HHR dollars, which is a separate program from SHIP. It is a totally separate pot of money that SHIP rules apply to.

Mrs. Corby asked if the City has a policy for the distribution of HOME and SHIP funds. Mrs. Thomas replied absolutely. Mrs. Corby said she would like to have a copy. Discussion continued on the SHIP plan, strategies and goals.

Following brief discussion, Mrs. Corby said she would like to know on the 20 tests that will be conducted what data we are collecting, how the data will be used, and how we will incorporate that into our policies and procedures. She does not want to spend 10 years on data collection and find in the end it is not useable. Mr. Schluckebier said that staff would be happy to provide additional information.

Mr. LaRusso said that he thought education should be brought in; however, he is satisfied with Mrs. Thomas's answer. He added that he wanted to ensure that we weren't simply testing, testing, testing without an education component.

Moved by LaRusso/Corby for approval of Item "g." Motion carried unanimously.

- I. **Resolution No. 2076: A resolution approving an amendment to the City's Local Housing Assistance Plan for State Fiscal Years 2008 through 2010 State Housing Initiatives Partnership funds to add a new Housing Assistance Strategy pursuant to Chapter 67-37, Florida Administrative Code; and authorization to submit the amended plan to Florida Housing Finance Corporation.**

Mrs. Thomas answered general questions about the program for Mrs. Corby and confirmed that the funds won't leave the SHIP account. They will be used in tandem with the My Safe Florida Home Funds. The State has notified us that we will receive a \$500,000 award under My Safe Florida Home Program, which is totally separate from the Hurricane Housing Recovery Program.

Mrs. Corby said that this is an excellent program. She asked if the City is going to institute some type of education program, perhaps on our web site, to inform our residents about this opportunity. Mrs. Thomas said that once the SHIP amendment is approved, which will take 30 – 45 days, the City intends to provide publicity. The web

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

site is a great place to advertise such a program. The City will be required to provide education along with this program to our residents.

Moved by Corby/LaRusso for approval of Item “l.” Motion carried unanimously.

m. Resolution No. 2077: A resolution implementing FY 2007-2008 First Quarter Budget Review recommendations.

With regard to the Community Redevelopment Agencies, the City Manager confirmed for Council Member LaRusso that the document reflects the final valuations and millage rates.

Moved by LaRusso/Contreras for approval of Item “m.” Motion carried unanimously.

At this point, Attorney Gougelman read the letter dated January 14, 2008 from Attorney Cliff Repperger with the Gray Robinson Law Firm. The Gray Robinson Law Firm is one of the firms representing the Richman Group of Florida, Inc., which is the applicant for the proposed Parkway Place site plan. The following is an excerpt from the letter:

In accordance with our telephone conference this morning, the applicant is hereby respectfully requesting that City Council table the hearing of the matter to a time certain of April 22, 2008. Over the past several months, the applicant has been meeting with residents from the surrounding communities to consider their input regarding the proposed site plan. The applicant recently submitted a revised “optional” site plan on January 9, 2008 to Planning and Zoning which incorporates some of the suggestions from those residents.

The applicant would like the opportunity to continue its dialog with the surrounding communities and to consider the possibility/feasibility of additional site plan modifications prior to City Council’s final consideration of the project. We firmly believe that tabling the matter at this point is in all parties’ best interests and will allow for the most prudent and productive use of all parties’ time and resources. In making this request, the applicant acknowledges and confirms that it is making this request voluntarily and specifically asserts that it will not claim damages of any kind associated with the requested table period should City Council grant this request.

Attorney Gougelman confirmed for the Vice Mayor that the action taken earlier on the agenda to order the continuance of this item “without objection” signified that Council would continue this item until April 22.

Recessed: 7:00 p.m.

Reconvened: 7:10 p.m.

14. RESOLUTION NO. 2078: (Public Hearing) A resolution adopting an Interlocal Agreement between the Brevard County Board of County Commissioners and the cities and towns of Cape Canaveral, Cocoa, Cocoa Beach, Indianalantic, Indian Harbour Beach, Malabar,

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Melbourne, Melbourne Beach, Palm Bay, Palm Shores, Rockledge, Satellite Beach, Titusville, West Melbourne, and the School Board of Brevard County, relating to school facility planning and school concurrency matters. (P&Z Board - 1/03/08)

Attorney Gougelman read Resolution No. 2078 by title. Mrs. Dittmer reviewed the agenda report.

Mr. LaRusso said his concern is that a developer in the middle of a project will scream foul if he suddenly has to put the brakes on because of school concurrency. Mrs. Dittmer elaborated on the review process and said that school concurrency will happen early in that process. The application will immediately be sent to the School Board and there will be a two-week timeframe for the School Board to respond. Committees will be established as part of this agreement and there will be a working relationship between the City and the School Board.

Mrs. Palmer pointed out that we have many condominium projects and perhaps subdivision projects that have been put on hold. She asked if school capacity will be reserved in the same manner as water, sewer, and transportation capacity. Additionally, she asked if the review of a plan would consider the actual number of students currently enrolled.

Mrs. Dittmer replied that projects approved by the City at this moment are exempt. This process will affect projects after all the cities have approved the agreement, it is transmitted to the Department of Community Affairs, and amendments are made to the City Code. This will all come together around June. If those projects expire they would have to get back in line as a new project and address school capacity.

The City Manager added that at this moment the School Board does not even have real numbers for our expected growth. As that number and the process become refined, the process will resemble water, sewer and transportation concurrency in the next three to five years.

Mrs. Palmer said she is concerned how this will affect a legitimate building moving forward, yet unable to reach concurrency because these figures floating around are not actually students in the classroom. Mr. Schluckebier reported that Brevard has a lower student population than what was projected. The School Board's consultant projected a lower number; however, the School Board has tried to compromise with the City and County projections. They are trying to deal with some kind of model to keep the system in equilibrium over the long haul.

Mr. Contreras asked if it would be safe to say the developer or applicant of a site would have an indication of whether they can proceed without expending thousands of dollars. Mrs. Dittmer said an applicant would come to the City with a development proposal, which includes a concept of how many units, type of uses, etc. The calculation of student generation varies based on the housing type. Therefore, there is no additional work from a developer's perspective. Once they submit a complete development application to the City, the City will forward it to the School Board staff with a request for student impact

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

analysis and determination. A developer will not be able to bypass the City and go directly to the School Board.

Mr. Contreras asked what happens if there is no capacity, including the opportunity for capacity at adjacent schools. Mrs. Dittmer said that would result in proportionate fair share mitigation. The developer would be told that they will generate a need for “X” students; therefore, their proportionate fair share to build classroom space is “X” amount. They would be required to pay that amount to proceed.

Discussion continued regarding data used by the School Board.

Mrs. Corby said she is assuming this effort in collecting data will parallel the census. Mrs. Dittmer said it will not. The cities and School Board have not agreed on this subject through the process. The School Board’s projections have shown declining student population, which is a statewide trend. The City foresees an increase in population, thus an increase in student population. We have agreed that the School Board will do an annual review. The idea is to be a number of years ahead of capacity issues. The School Board’s role in this is to plan appropriately for school capacity.

Mrs. Corby asked how Melbourne determined that there has been an increase in population. Mrs. Dittmer replied that we looked at our growth and population in the City. The City is growing by 700 to 1,000 people annually. The Bureau of Economic Business Research provides those statistical numbers, which staff uses for population projections.

Mrs. Corby pointed out that school needs are directly related to birth rates; therefore, she thinks the 2010 census would provide significant data. Mrs. Dittmer agreed and said that will be additional data staff will look at. She pointed out that it will be at least 2011 before we receive any of the census data. In the meantime, the School Board has agreed to continue having their consultant look at the numbers annually.

Mr. LaRusso referenced the “unresolved matters” section of the agenda report and asked staff to comment. Mrs. Dittmer said staff believes these issues will be worked out with School Board staff. We will continue watching student generation rates year to year. At the staff level we will be able to see if we are going to run into an issue. Mr. LaRusso pointed out that these are fairly significant unresolved matters. Mrs. Dittmer said that we continue to talk to School Board staff and they have agreed to additional changes.

Mrs. Corby asked if the representative from the School Board would like to add any comments.

Mike Gaffney, Brevard County School Board, referenced the provision for proportionate fair share mitigation and reported that it would require a tri-party agreement with the local government, developer and the School Board. Therefore, the City would also have to be in agreement. Regarding projections, he noted that the School Board used the cohort survival method for the 2007-2008 data. In planning for the 2008-2009 projections, they have used their consultant, met with local governments, compiled development data and, in some cases, vacancy data. The result is that the projections this year will be different

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

than last year. He stressed that the bottom line is the projection methodology isn't tied down in the agreement, rather the agreement provides that all parties will agree to the method.

Mr. Contreras referenced the proportionate fair share mitigation and pointed out that the development of schools requires more than brick and mortar. It includes staffing, etc. Mr. Gaffney agreed and referenced that portion of the agreement.

Vice Mayor Meehan opened the public hearing. There were no public comments.

Moved by Contreras/LaRusso for approval of Resolution No. 2078 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

15. RESOLUTION NO. 2079: (Public Hearing) A resolution authorizing transmittal of Comprehensive Plan Amendments (CPA-2007-12) Public School Facilities Element, and (CPA-2007-13) Intergovernmental Coordination Element, to the Department of Community Affairs. (P&Z Board - 1/03/08)

Attorney Gougelman read Resolution No. 2079 by title. Mrs. Dittmer reported that this is a request to transmit the Comprehensive Plan amendments to the Department of Community Affairs for review. This provides for one new element to the Comprehensive Plan, the Public Schools and Facilities Element. It implements the interlocal agreement approved in the previous agenda item. This is the implementing element within our Comprehensive Plan that gives us our goals, objectives, and policies.

Additionally, there are two amendments to existing elements. The Intergovernmental Coordination Element will reflect agreements with the School Board and school concurrency. The Capital Improvements Element will provide for the adoption of the School Board's five-year facilities plan.

These Comprehensive Plan amendments will be transmitted to DCA for review and will return to Council in late April/May with an ordinance providing for adoption.

The public hearing was opened and closed with no comments.

Moved by Thomas/LaRusso for approval of Resolution 2079, (based upon the findings contained in the Planning and Zoning Board memorandum). Motion carried unanimously.

16. RESOLUTION NO. 2080: (Public Hearing) A resolution authorizing transmittal of a Major Comprehensive Plan Amendment (CPA-2007-11) Downtown Melbourne Expansion Area, Phase I, to the Department of Community Affairs. (P&Z Board - 1/03/08)

Attorney Gougelman read the resolution by title. Mrs. Dittmer briefed. The following is an excerpt from the agenda report:

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

This is a proposed map amendment and does not involve any actions on annexation, zoning, or development plans. Once the Department of Community Affairs (DCA) has reviewed the amendment, an ordinance providing for the change will return to Council for approval.

The specific request is to amend the future land use map to change approximately 47 parcels totaling 14.93± acres to Commercial/High Density Residential (9.99± acres) and Commercial/Medium Density Residential (4.94± acres) within the recently expanded Downtown Melbourne Community Redevelopment Area (CRA). City staff held two workshops with the property owners and a joint workshop with the CRA Advisory Committee and the Planning and Zoning Board. The newly adopted redevelopment plan recommended the change to C-3 zoning to assist in revitalization efforts in the redevelopment area.

The City is proposing either a Commercial/Medium Density Residential or Commercial/High Density Residential Future Land Use designation for selected properties in the expansion area. The Commercial/Medium Density would allow the consideration of residential densities of up to 15 units per acre. The Commercial/High Density would permit densities of greater than 15 units per acre.

The properties in the expansion area, west of the FECR are not part of the Comprehensive Plan amendment. These properties are already designated as Commercial/Medium Density Residential, which permits the consideration of both residential and commercial uses. Additionally, the CITA property is not included in this request. All of the properties are currently developed with a mixture of commercial uses, and several residential structures.

Several property owners spoke against the proposal to rezone their properties to C-3; however, no specific comments were related to the proposed land use change. The Planning and Zoning Board voted five to one to recommend approval of this request.

Mrs. Palmer asked for staff to comment on the objections raised by several property owners at the Planning and Zoning Board meeting.

Mrs. Dittmer said that the objections relate to the future rezoning, not the land use. Most of the area is zoned C-2, general commercial, and the proposal is to rezone to C-3. Some of the uses would become non-conforming; however, they would be grandfathered and allowed to continue. Those types of businesses include automotive repair. Several are located in this portion of the expansion area. For clarification, when the workshops were held, the City proposed adjusting the land use and zoning on the entire expansion district. A lot of the opposition that came out of those workshops came from property owners located along U. S. 1 south of Line Street. The proposal on this agenda only affects properties located north of Line Street. Staff tried to eliminate a lot of the property owners who had objections during those workshops. However, there are still a few in this proposed area who object to the proposed C-3 zoning.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Mrs. Corby asked what rights the property owners would have who object if this item passes. Mrs. Dittmer explained that this request is to transmit the item to the Department of Community Affairs. After it returns, staff will return to Council with an ordinance for the land use change and an ordinance for the zoning change. The ordinances will go through another public hearing process. At that time, Council could take different action.

Mrs. Meehan opened the public hearing.

Jim Schaub, representing the Melbourne Yacht Club, 1202 East River Drive, stated that they are in the area; however, the change will not affect their property. He reported that the Yacht Club is supportive of the Comprehensive Plan change and subsequent zoning change.

Mr. Schaub informed Council that they are concerned about the future use of the Florida Institute of Technology marine facility. The property is a true gem in the City and they hope FIT will maximize the marine related uses of that property. The proposed C-3 zoning allows flexibility and they are concerned something uninspiring could be created on that property. He encouraged the City to not lose site of the unique maritime heritage in the area. Floridians are losing their ability to access water and as FIT proceeds towards redevelopment, it's important that this special property be treated with great sensitivity. The Yacht Club is also asking that a strong marine related component be incorporated into any plan considered.

Mr. Contreras recommended that the Yacht Club engage in dialogue with Florida Institute of Technology.

Jeff Ellison, representing CITA, Inc., referenced a newspaper article that indicates CITA is not included in this change.

Mrs. Dittmer confirmed that CITA is not included in this proposal. It is zoned C-2 with a conditional use for a homeless shelter. Staff did not propose this property to be included in the C-3 zoning change.

Mr. Ellison reported that they also own a lot south of this location, which is used for maintenance of their machinery. He informed Council that this property is important to their operation and it's important that they not lose this use. Mrs. Dittmer said that staff will clarify whether the property south of CITA is included before the item returns to Council.

Mrs. Palmer asked if there will be one blanket rezoning ordinance when the item returns or if it will be parcel by parcel. Mrs. Dittmer replied that there will be one rezoning ordinance that will include a map showing the parcels. Property owners will be re-notified. Mrs. Palmer asked if there will be an opportunity to amend that map at the public hearing and Mrs. Dittmer replied yes.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Moved by Contreras/Thomas for approval of Resolution No. 2080 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

17. ORDINANCE NO. 2008-04 (Z-2007-1127) CARL C. GAY: (First Reading/Public Hearing) An ordinance changing the zoning from R-1AA (Single-Family Low Density Residential) to R-P (Residential Professional) on a 0.58±-acre parcel, located on the north side of Sarno Road, east of Apollo Boulevard, and west of Kelmore Drive. (Owner/Applicant/Representative - Carl C. and Sylvia F. Gay) (P&Z Board - 1/03/08)

Note: Council received an e-mail dated January 16 from Kelli Jo Holt, outlining her opposition to the requested rezoning.

Attorney Gougelman read Ordinance No. 2008-04 by title. Mrs. Dittmer briefed Council and noted that the Planning and Zoning Board voted unanimously to recommend approval of the rezoning from R-1AA to R-P.

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

Sid Johnson, 1725 Bluebird Court, representing Carl and Sylvia Gay, stated that the property had been used for 15 years as a commercial property. The value would be depleted too much to sell as residential. The person purchasing the property as residential would have to put an equal amount of funds into the property to transform it to residential.

Mrs. Corby asked what type of uses R-P zoning would allow. Mr. Johnson replied that it would be professional uses like doctors, attorneys, etc. Mrs. Dittmer added that is correct.

Bill Insko, 949 Kelmore Drive, stated that he supports the rezoning request. He informed Council that he was adamantly opposed to the previous request to rezone to C-1. Mr. Insko agreed that the building has been significantly modified and is no longer considered residential property.

Mr. Insko said that he has one reservation. When the property was previously granted transitional zoning, there was a requirement for a fence along the perimeter. At the Planning and Zoning Board meeting, the board required a 100% opaque fence. Mr. Insko said he would like a masonry wall or plastic fence – something besides the wooden fence that is falling down.

Mr. LaRusso asked if R-P zoning allows a daycare facility. Mrs. Dittmer said it would require a conditional use with approval by the City Council.

With regard to the fence, Mrs. Palmer said that the property owners have tried hard to improve the property and sell it. She cannot support the request for an expensive masonry fence. Mrs. Palmer pointed out that Code Enforcement can be called into play if there is a dilapidated fence on the property.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Moved by Palmer/Corby for approval of Ordinance No. 2008-04 (based upon the findings and condition contained in the Planning and Zoning Board memorandum). Motion carried unanimously.

18. ORDINANCE NO. 2008-05 (LDR-2007-10/FOC-2007-12) HISTORIC PRESERVATION BOARD: (First Reading/Public Hearing) An ordinance amending Appendix D, Chapter 1, Article II, Section 1.15 of the City Code, to establish quasi-judicial authority for the Historic Preservation Board. (P&Z Board - 1/03/08)

Attorney Gougelman read Ordinance No. 2008-05 by title. Mrs. Dittmer introduced the item and responded to general questions. She noted that when the Historic Preservation Ordinance was adopted and the board was created, Appendix D was not amended to include the board as having quasi-judicial powers. This ordinance does not amend the Historic Preservation Ordinance in Chapter 10 of the City Code.

The public hearing was opened and closed with no comments.

Moved by Thomas/LaRusso for approval of Ordinance No. 2008-05 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

19. ORDINANCE NO. 2008-06 (FOC-2007-13) BABCOCK STREET COMMUNITY REDEVELOPMENT PLAN AMENDMENT: (First Reading/Public Hearing) An ordinance amending the Babcock Street Community Redevelopment Plan. (P&Z Board - 1/03/08)

Attorney Gougelman read Ordinance No. 2008-06 by title. Mrs. Dittmer introduced the item. The following is an excerpt from the agenda report:

The new plan would essentially replace the plan that was adopted by City Council in 1998. The plan modification proposes continuation of some of Babcock's current projects, but also includes implementation of new initiatives and programs. The Babcock CRA boundaries and the agency sunset period will remain the same.

The Babcock CRA Advisory Committee has unanimously recommended that City Council approve the amendment to accept the amendment. The Planning and Zoning Board voted unanimously to approve a finding of consistency.

John Jones, senior planner, Land Design Innovations, Inc. provided an overview of the Babcock Street Community Redevelopment Agency 2007 Redevelopment Plan:

Background: Babcock Street is one of the City's first suburban commercial corridors; the 1982 opening of the Melbourne Square Mall severely impacted the Melbourne Shopping Center and Brevard Mall; growth shifted north and west; and property values declined along Babcock Street. The Babcock Street CRA was established in 1997, and it was designed to address declining property values and retail business flight.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Accomplishments to Date: Realignment of north end of Babcock Street; redevelopment of former Brevard Mall from retail to employment center; redevelopment of Melbourne Shopping Center; streetscape improvements; north end redevelopment; commercial redevelopment; residential redevelopment; Airport development; and future development areas identified.

Community Input Process: Two public workshops; comment forms and e-mail; and individual meetings with CRA Advisory Board.

Community Priorities: Sidewalk connections and bike racks; building more parks, maximize underutilized parks, need for a children's park in northern part of CRA; build a convention center close to the Airport; increase safety/security and improve lighting; and streetscape beautification.

Plan Recommendations: Continue to invest in public facilities and infrastructure; plan for impact of future growth and development; expand development opportunities; redevelopment and cultural amenities; and marketing of opportunity sites within the CRA.

Mr. Jones pointed out that the total project costs for activities and improvements in the redevelopment plan are \$12,507,992, the estimated tax increment financing revenue through 2017 is \$9,720,165, and the lifespan of the CRA is through 2022.

In summary, Mr. Jones discussed the impact from Escambia County v. Strand, which is a Florida Supreme Court ruling that requires a referendum on the use of tax increment financing funds to leverage debt.

Mrs. Palmer asked Mr. Jones to elaborate on "reuse of the Melbourne Auditorium Civic Center," which was discussed under plan recommendations/redevelopment and cultural amenities.

Mr. Jones replied that it is an undersized facility that can't compete in the commercial marketplace. It has limited marketing appeal for conferences and conventions. A potential idea would be to use the Auditorium as a community center for community programs; it is surrounded by neighborhoods.

Mr. LaRusso said he is interested in the marketing of sites in the CRA. He asked about the strategy and noted that he has received conflicting information that cities should not market.

Mr. Jones explained that marketing is used to redevelop a blighted area. There is an opportunity to partner with the Economic Development Commission; the EDC can help locate primary employers. Additionally, the Airport can assist with marketing. The idea is to work with agencies that exist in the County.

Mr. Schluckebier added that the City and the CRAs have intentionally, except on a short-term basis, not desired to get into the land-banking concept. We are not involved in

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

marketing private property and it is unlikely that will change. That is the role for the EDC or other quasi-private agencies; the City does not have a marketing arm.

A brief discussion continued. Mr. Jones pointed out that the CRA plan outlines activities that may be undertaken. If these activities are not in the plan, they can't be undertaken. The CRA is simply reserving the opportunity.

John Edmiston, Chairman, Babcock Street CRA Advisory Committee, spoke in support of the plan. He pointed out that everything in the plan will probably not be done; however, it is a good framework to put forward.

Mr. Schluckebier confirmed for Mrs. Corby that the City Council is the CRA and Council will make the final decision. Mrs. Palmer commented that she doesn't agree with everything in the plan; however, she will argue those points when items come forward. She added that the redevelopment area has made great progress.

Moved by Palmer/LaRusso for approval of Ordinance No. 2008-06 (based upon the findings contained in the Planning and Zoning Board memorandum). Motion carried unanimously.

20. COUNCIL ACTION RE: Proposal to acquire real property in resolution of threatened litigation, Richard White vs. City of Melbourne, \$395,000.

Attorney Gougelman introduced the item. The following is an excerpt from the agenda report:

Richard White owns a small piece of commercial property at the northeast corner of Babcock Street and Laurie Street in the Babcock Street Community Redevelopment Area. He purchased the property, improved with two storefront areas in June 2004, after the approval of the Babcock Street Realignment Project construction plans, but before the actual commencement of construction of the Project.

Since early January 2005 Mr. White has claimed various damages to his business and property as a result of the Realignment Project for Babcock Street/Ballard Drive and the actions of the City of Melbourne. In addition, the realignment of Babcock Street/Ballard Drive removed parking for Mr. White's storefronts and those of several other merchants with adjacent property. While the parking was located on the public right-of-way, as a practical matter it raises questions regarding the availability of parking for Mr. White's storefronts and those of the property owners. In August 2007, Mr. White's attorney, Mark Leavitt, provided the City Attorney's Office with a draft of the inverse condemnation complaint that he planned to file against the City of Melbourne and the Babcock Street Community Redevelopment Agency (CRA).

The main points of the four-count complaint are that the City/CRA effected a "taking" of his property by depriving him of all access to and use of on-site parking for his property when the City removed a large portion of the parking area serving his property, removed concrete and other improvements on his property, and blocked his driveway access from

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Laurie Street. The complaint requests that the Court require the City/CRA to institute condemnation proceedings and to compensate Mr. White for the value of parking area taken and for the damages to the remainder of his property that was not taken, for his lost rental income, for damage to the improvements on his property, for damage to the value of his property, and for his attorney's fees.

Staff does not believe the City/CRA acted improperly regarding Mr. White's property or business, and the City/CRA has several factual and legal defenses that it will assert if the complaint is filed. However, staff was concerned about resolving Mr. White's complaint since, if he prevails on any point, the City/CRA would be responsible for Mr. White's attorneys' fees. Staff is also concerned about assuring the availability of convenient replacement parking for the other property owners and merchants along the segment of roadway that has been realigned. As a result, staff agreed to meet with Mr. White and his attorney and a neutral third party mediator in an attempt to resolve (1) Mr. White's claims and (2) the parking problem that the North Babcock Street business owners are going to face after the City/CRA uses its right-of-way to widen Babcock Street between Laurie Street and U.S. Highway 1. The mediator selected also works as a condemnation attorney for FDOT.

In preparation for the mediation, staff obtained an appraisal as to the amount of money that the property is worth. The appraisal reflected a value of \$310,000 for the existing commercial property, but this appraisal does not include any damages that Mr. White has claimed or the value of his attorneys' fees. After a full day of negotiations, City staff, Mr. White and his attorney agreed to present to the City Council/Babcock Street CRA the following proposal:

- *The City/CRA will pay to Mr. White \$395,000 for both the fee simple title to Mr. White's property and for a complete resolution of any and all claims that Mr. White has against the City/CRA.*

The proposal has several contingencies, including approval by the City Council/CRA, acceptable inspection reports, an unconditional release of all claims, and closing of this transaction within 60 days of Mr. White's notice to his tenants regarding termination of their leases. If the City/CRA acquires this property, it will likely demolish the two storefronts on the site and create approximately 12 public parking spaces.

The Babcock Street CRA Advisory Committee considered the proposal during a special meeting on January 9, 2008 and recommended (1) that the Council/CRA reject the negotiated proposal and (2) that the Council/CRA make an offer to Mr. White to purchase the property for \$310,000. While the City Attorney agrees with the reasoning behind the Babcock Street CRA Advisory Committee's recommendation, the City Attorney believes that the consequences of a rejection of the mediated settlement proposal could well cost the City more than \$395,000.

Assistant City Attorney Suzanne Crockett said that the essential elements of the mediated settlement agreement are set forth in the agenda materials. The proposal will allow the City/CRA to acquire the fee simple interest in the real property, resolve Mr.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

White's claims and provide some parking that will alleviate what staff believes will be future claims from the remaining property owners once the portion of Babcock Street, between Laurie Street and U. S. 1, is widened.

The City of Melbourne owns the 100' right-of-way, but is only utilizing a portion of it for the roadway. The remaining portion of the right-of-way is being used for parking by the tenants and the owners of the commercial parcel on the north side of Babcock Street. There is no right-of-way use agreement or written agreement between the City and these property owners that would allow them to use the right-of-way for parking.

Mr. White believes he has been damaged by the City of Melbourne constructing Phase 1 of the Babcock Street Realignment Project – the property from Laurie Street south. Mr. White claims that when Laurie Street was re-paved, a curb and sidewalk were constructed within the right-of-way. No dirt was taken away from Mr. White to construct that improvement; however, it had the effect of eliminating his driveway access that he used to enjoy along Laurie Street. Mr. White believes blocking the entryway from Laurie Street to his property effected a taking.

City staff met with Mr. White and his attorney in April 2006, looked at the site and by July 2006 the driveway was reestablished along Laurie Street. Mr. White is saying in his draft complaint that for a period of about 22 months he and his tenants were denied access to his property from Laurie Street. He's claiming damages as a result of that, including lost rents. Also during this time, staff had taken the position that the property had lost its grandfathered status as non-conforming and, therefore, would have to be brought into compliance with the landscaping and parking codes. This position was reasonable at the time because the City had no evidence that the property was being occupied. In February 2006 Mr. White's attorney provided City staff with evidence that the properties had been occupied and were continuously occupied. The City had no notice of it because there were no occupational licenses issued to the tenants. The City received a statement from a Realtor indicating that the properties were occupied. Upon receipt of that information, City staff reestablished the grandfathered status.

Mr. White and his attorney have provided the City with a draft complaint charging that the City of Melbourne has inversely condemned his property with the construction of the curb along Laurie Street and with denial of use of the property by virtue of loss of the grandfathered status. All of these properties on North Babcock Street were notified that the road widening was about to commence. Property owners were encouraged to contact the City if they were interested in selling their properties. In accordance with that mind frame and the procedural posture that staff had been following, an 8-½ hour mediation session was held with Mr. White and his attorney on December 21, 2007. Following negotiations, the best price City staff was able to arrive at was \$395,000. This includes the City's acquisition of the property, resolution of all claims, and the ability to resolve parking problems for the remaining tenants when the Phase 2 road widening is undertaken.

Mrs. Crockett asked Mr. Leavitt if he would like to add anything to the factual presentation.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Mark Leavitt, Dean Mead Law Firm, representing Richard White, commented that the improvements in this area will benefit the entire community, yet uses that have been there for 50 years are going to be without street parking for the first time. He pointed out that at this point there is only one party that has had a negative effect, and that is Mr. White.

Attorney Leavitt said that the City Attorney's office spent a long time trying to avoid jumping straight into litigation. He recognizes that risk exists on both parties' parts and added that his client is not being made whole, which is the standard of the law under this situation. Mr. White is still paying out of pocket attorney's fees. Mr. Leavitt said that he looked at risk issues on behalf of Mr. White and made this recommendation with great difficulty.

He pointed out that the Supreme Court of the United States has recognized a temporary taking of private property rights. Mr. White has not lost all use and enjoyment of this property. But, for about 20-22 months, he did lose all use and enjoyment of the property and that essentially is what the litigation would be about. Inverse condemnation is a very difficult circumstance because what ends up happening is in the event that the parties desire to resolve it later in the process, the fees and costs end up making that resolution virtually impossible.

Under the Florida Constitution, if a taking is found in this matter, costs and fees will be the responsibility of the City. From his client's standpoint, the amount of the temporary claim he is making is around \$50,000. The attorney's fees and costs will quickly outweigh that. If the City comes in later and says it can pay for lost rents, the difficulty is that Mr. White will have spent so much money on litigation that the only way he can resolve it is to have a court say he's entitled to lost rents and lost fees. Mr. Leavitt said that he takes the risk of litigation seriously and that is why Mr. White has agreed to an amount quite a bit lower than he feels is appropriate.

Continuing, Mr. Leavitt said the City's appraisal is at \$310,000. The lost rents are \$50,000 and a portion of the out of pocket expenses that Mr. White has already paid is approximately \$50,000. A portion of that would be paid by the settlement, the rest he's going to have to pay out of his pocket. It also does not pay him for the loss of the use of the income that he would have received from those rents at an earlier date.

This settlement kills three birds with one stone: 1) It gives Mr. White his Constitutional right to use his property for that temporary period of time. 2) It gives the City property that Mr. White does not wish to sell. Litigation would only be on the temporary taking. The City would receive a piece of property that the City's appraiser valued at \$310,000. 3) In addition to providing needed parking, it avoids the risk.

Mr. LaRusso asked when the appraisal was done. Attorney Gougelman replied March 2007.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Mr. Leavitt said that his appraiser cannot give a verbal appraisal; however, he believes the value would be in excess of \$400,000. That would have to be made part of the settlement and the City would need to reimburse the cost of that appraisal, which is estimated at \$5,000.

Mr. Gougelman said the formal appraisal in Council's package was done by Tuttle-Armfield-Wagner, local MAI appraisers. They are the City's appraisers. The other appraisal Mr. Leavitt referenced is an individual he has used in a number of eminent domain cases and that individual has looked at the property but not prepared a formal written appraisal. His opinion to Mr. Leavitt is that if he does do a formal appraisal it will come in at over \$400,000.

Mrs. Crockett confirmed for Mr. LaRusso that a drawing prepared by the Engineering Department shows that the City would be able to provide 12 parking spaces on this property.

Mr. Thomas asked if Mr. White purchased this property after the plans for Babcock were on file. Mrs. Crockett replied yes. The City approved the preliminary plans in March 2001 and the final design was approved by City Council on December 19, 2001. The plans were public record and available.

Mr. Thomas asked if there was access to Mr. White's property from Babcock Street during those 22 months.

Mr. Leavitt replied no and said there was pedestrian access. And, there was access by driving in to the first parking space of the next-door property and making a hard right, if no cars were parked there.

Mr. Contreras asked Mr. Leavitt if his client is at this meeting. Mr. Leavitt said that he advised Mr. White that it would be wise not to be here when he realized that he would not be able to contain himself. Mr. White is very passionate about this matter.

Mrs. Corby said that Mr. Leavitt mentioned that approving this recommendation would allow Mr. White to use his property. She said that earlier she heard that the property is in use and had been in use.

Mr. Leavitt clarified that approving the proposal in front of Council would sell the property and Mr. White would receive the compensation related to settling the case and selling the property. Thanks to staff, we reached a point some time ago where Mr. White got a driveway to the property and was able to lease the property. If Council does not approve this settlement, Mr. White is happy to continue to rent his property but he would seek compensation for that 20-month period of time when there was a temporary taking.

Mrs. Corby asked what exactly Mr. White feels the City took. Mr. Leavitt said he will not go through the totality of the litigation process, but the primary item the City took would have been access to the property. There is a legal right in the State of Florida to have

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

access. Access also leads to the opportunity to have tenants for a 20-month plus period of time. Mrs. Corby asked if that amount equates to \$50,000 and Mr. Leavitt replied yes.

Mr. Thomas asked staff to clarify the statement regarding occupancy. Mrs. Crockett elaborated and said that the last occupational license for a business at this address was June 1999. Mr. White purchased the property in June 2004. According to the non-conforming use provision in the Code, if the property is vacant for 90 days or longer, that period of vacancy is the period in which the property loses its grandfathered status.

Mr. Leavitt added that there were hurricanes after Mr. White bought the property in July 2004. Mr. Leavitt said it is his understanding that the City was trying to work with owners under the circumstances of the hurricanes to provide some relief from the strict ruling of the 90-day requirement during that period of time.

Mr. Contreras asked if there are currently businesses operating on Mr. White's property. Mr. Leavitt replied there are two businesses and they are paying the same rent calculated for the purposes of the \$50,000. They are both not-for-profit businesses. Mr. White has just renegotiated the leases; however, he did include a provision that he would give them notice in the event there was a resolution to this matter. He has given that notice to them in an informal way, not in a written way, because the approval of Council was needed. At the same time he did not want to put them in an awkward position of being left in the lurch. One of those tenants is an agency that receives state funding and they are not too happy about it. They've tried to suggest that despite the fact they signed a contract that says they can be put on this notice, they are trying to avoid that.

Mr. Contreras asked what the notice is and Mr. Leavitt said he believes it is a 60-day notice.

Mr. Contreras asked if Council approves this proposal, if the 60-day clock starts tomorrow. Mrs. Crockett replied that the mediated settlement agreement says the 60-day time period begins on the first day of the month following the Council meeting. Therefore, the 60-day timeframe would start running on February 1. Mr. Leavitt added that if this were approved tonight, Mr. White would get that written notice out probably as early as tomorrow. The closing date is 60 days out from February 1.

Mr. Contreras asked Mr. Leavitt if his client would be amenable to giving notice tomorrow. Mr. Leavitt replied that he has an obligation to give notice prior to the end of the month.

Discussion followed regarding the lease language and the lease obligations between Mr. White and his tenants. Mr. Leavitt confirmed that 60-day notice is in writing in the lease agreements. And, if they cannot deliver property that is vacant and free of tenants, then the City would not go to closing.

Mrs. Corby said she would like to list the factual basis for not approving this settlement as is. The drawings for the Babcock Street widening were completed in 2001. Mr. White purchased the property June 29, 2004 for \$162,000 with four parking spaces that were in the right-of-way. Although there was no agreement with the City, the City was allowing

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

the use of those spaces. Mrs. Corby said she spoke with Mr. White's attorney earlier today who indicated that Mr. White was aware the parking spaces were in the right-of-way. The City has also received a letter from the broker stating that Mr. White was informed of the parking and was advised to contact the City because of the future plans in that area.

Continuing, Mrs. Corby said she doesn't know if that occurred. However, Mr. White is asking the City to take taxpayers' dollars and compensate him for something he never owned that he is claiming we took. She added that she realizes the exception is the 22-month period. Mr. White is asking for compensation at 100% of what he has invested. She stressed that the City is not responsible for picking up the risk that somebody makes when they make an investment. Mr. White invested \$36,000 in repair when he purchased the property; therefore, she is willing for the City to purchase the property for \$198,000 – the \$162,000 purchase price plus the \$36,000.

Mr. Contreras briefly discussed that there may be some consternation with one of the tenants. He noted that he believes the City should be compensated if there is a holdover tenant. Discussion continued. Mrs. Crockett said that there was no such contingency provided for in the mediated settlement agreement. However, perhaps the parties could reach agreement in the event that happens.

Mrs. Corby stated that she believes it would be fair to compensate Mr. White for the price of the property and the dollars that he invested in the property. She pointed out that it is frustrating because we have this image that if anyone is not happy with something, they can come before Council and threaten to sue. That seems to be what is before Council and that is unacceptable. She stated that she has a responsibility to the taxpayers and she can't agree to compensate someone who didn't do their due diligence when purchasing the property.

Moved by Corby/Palmer to purchase the property for \$198,000. (Note: motion later withdrawn.)

Mr. Thomas said he shares the sentiments; however, he doesn't think we should spend one penny to buy the property. He pointed out that Mr. White has indicated he would be happy to keep the property and we would all like to make Mr. White happy. He added that he is not convinced that it is in the public's interest to spend \$395,000. It's in Mr. White's interest. He won't support the motion on the floor and he won't support the recommendation in the agenda package.

Mr. LaRusso said he shares the same concerns; however, our legal counsel has indicated that the damages to the City and taxpayers could skyrocket. It's not an easy call. He supports the mindset of Mrs. Corby, but he believes staff knows more than City Council.

Mrs. Palmer said even if Council believes the property should be purchased as parking, she is not happy with the appraisal at this spot, with that configuration, and during this market. She believes the appraisal is inflated. Mrs. Palmer added that she wishes we

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

had been able to provide ingress and egress immediately. She noted that she had concerns with the Babcock plans knowing that these businesses have been using that on street parking for 50 years. Although the parking did not belong to them, it is something the City allowed.

Continuing, Mrs. Palmer pointed out that Mr. White came in after the fact. He was not using those parking spaces for 50 years. It was very public what the City was doing. She stated that she supports the offer to buy the property to cut Mr. White's losses in the way the City Council sees his losses.

Mr. Leavitt said that he does not believe the plans showed loss of access when Mr. White purchased the property and that is what the litigation would be about.

Discussion followed regarding Mr. White's attorney's fees, which could go as high as \$75,000.

Mr. Contreras stated that he finds this brand of business to be very distasteful. It galls him that this individual would have the audacity to say, in effect, "I'll show you City of Melbourne..." Mr. Contreras commented that in his opinion, there is probably more risk involved in this.

Discussion continued.

Mrs. Corby said she is trying to weigh the amount of expense that the City would incur with attorney's fees and it would probably be less than the amount stated in her motion. She asked Mr. Thomas if he was thinking of making a motion to not approve this. Mr. Thomas said he did not intend to support this.

The maker/seconded withdrew the motion.

Moved by Corby/Thomas to deny the recommendation altogether. The roll call vote was:

Aye: Thomas, Palmer and Corby

Nay: Contreras, LaRusso and Meehan

Motion failed.

Attorney Gougelman pointed out that the City Council needs four votes (by Charter) to take any action; therefore, this is an incomplete action.

Mr. LaRusso pointed out that the Council is in a deadlock. He asked Mr. Leavitt if his client would be willing to postpone this until the next meeting. Mr. Leavitt said he will do what he can to modify the terms and buy the additional time. Mr. Schluckebier said that unless Council objects or if Mr. Leavitt indicates in writing that the proposal is off the table, the item will return on the next agenda under unfinished business.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

Moved by LaRusso/Palmer to postpone this item until the February 12 agenda.

Mr. Contreras pointed out that the date is predicated on a full Council being present. Mrs. Palmer added that Council will not be starting over from scratch on this issue; the action will be to look for a new motion. Attorney Gougelman said presumably that is where this item stands; however, another member joining the discussion may want to go over some ground that has been covered. A specific motion on the floor didn't pass because under the Charter, four votes are required. And, under Roberts Rules of Order there is a tie vote; therefore, any other motion is in order.

Mr. LaRusso confirmed that his motion to postpone until a date certain depends on a full Council being present.

The question was called. Motion carried unanimously.

21. SITE PLAN APPROVAL (SP-2007-19) PARKWAY PLACE APARTMENTS: (Public Hearing) A request for site plan approval to allow a 216-unit multiple-family apartment project at a density of 14.66 units per acre on a 14.73-acre site zoned R-2 (15) (One-, Two-, and Multiple-Family Medium Density Residential with a cap of 15 units per acre), located on the southeast corner of Parkway Drive and Wickham Road. (Owner - Wickham Park, LLC) (Applicant - The Richmond Group of Florida, Inc.) (Representative - Matthew Soyka, Soyka Engineering & Associates, Inc.) (Postponed - 10/09/07)

Note: Reference announcement made at the beginning of the meeting and discussion under Item 13. By consensus, Council postponed this item until the April 22, 2008 meeting.

22. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Corby referenced the skateboard park presentation made to City Council on May 8, 2007 by the Eau Gallie High School students participating in the Advanced Via Individual Determination (AVID) Program. Following discussion, Council approved her request by consensus to award the students with a certificate or proclamation acknowledging their efforts at the February 12 meeting.

Mr. Thomas asked for an update on the water supply negotiations between Melbourne and West Melbourne.

The City Manager reported that both staffs met last week; meetings have been scheduled every two weeks. The interests of both cities are substantially aligned and he believes that West Melbourne is very interested in a long-term water purchase relationship. West Melbourne understands that it will have to follow through with additional modeling and requirements for concurrency. Staff is formulating proposals to keep ideas in motion. In short, the meeting was very positive.

Mr. LaRusso referenced the e-mail distributed to Council from Cindy Dittmer to the City Manager regarding the Eau Gallie art district rezoning. (Based on recent direction from

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2008

the Florida Department of Community Affairs, the Comprehensive Plan amendment for the district cannot be adopted as a minor. It must be part of the next major amendment that begins July 1. Actual rezoning would not occur until late September/October.) Mr. LaRusso pointed out that everyone thought this would come before the Planning and Zoning Board in February and then before Council in March. This is a major setback. He asked staff and the City Council to support whatever means are necessary to get this in the pipeline to DCA during this cycle so the project does not lose momentum.

Following brief discussion, the City Manager advised that to the extent the City has the ability, Council could latch this on to the major amendment (on this agenda) being transmitted to DCA. Mr. LaRusso pointed out that he's not looking for an automatic rezoning, just the ability to move this quicker.

Moved by LaRusso/Thomas to attach (the Eau Gallie art district future land use amendment) to Resolution No. 2080 to transmit to the DCA, if possible.

Mrs. Dittmer confirmed for Mr. Contreras that this is being treated as a major amendment because the land area exceeds 10 acres. Mr. Contreras asked if the acreage could be split. Mrs. Dittmer replied that she and the City Attorney will review whether this can be attached to Resolution No. 2080 or whether the land area can be split. The City Manager added that splitting the acreage would be a fine backup effort.

The question was called. Motion carried unanimously.

23. ADJOURNMENT

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

The meeting adjourned at 10:00 p.m.



City Clerk – 2/4/2008

Approved by Council: _____