

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
APRIL 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. Pastor Gary Stebbins, Church on the Rock, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

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

4. Proclamations and Presentations

Mayor Goode presented the following proclamations:

“National Volunteer Month,” April 2008; accepted by Willa Cox, President, Melbourne Woman’s Club.

“National Public Safety Telecommunications Week,” April 13-19, 2008; accepted by Joannah Booth, Communications Officer (Communications Officer of the Year), Melbourne Police Department.

Mayor Goode presented a Certificate of Commendation to Sergeant Danny Lynch, Melbourne Police Department. Sergeant Lynch stopped a speeding vehicle on Eau Gallie Boulevard on April 2 and administered CPR to an unresponsive four-year old inside the vehicle. Sgt. Lynch’s quick and effective actions were crucial in saving the child’s life.

Mayor Goode presented Vice Mayor Kathy Meehan the Florida Metropolitan Planning Organization Advisory Council’s Certificate of Completion for attending the February 29 – March 2, 2008 “Weekend Institute for Elected Officials.”

5. Approval of Minutes - March 25, 2008 Regular Meeting

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

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6. City Manager's Report

Council Member John Thomas referenced the information provided by the City Manager on the water negotiations with West Melbourne. Mayor Goode recommended that Council discuss this under petitions, remonstrances and communications.

Council Member Joanne Corby referenced the information provided on the conceptual plan for the proposed "Dragon Point" development on the Eau Gallie Causeway. Following a brief discussion, City Manager Jack Schluckebier confirmed that most of the marina property is located in the City of Melbourne; however, a portion of it is located in Indian Harbour Beach. The property located across the water where the "dragon" was located years ago is the southern tip of Merritt Island.

Mrs. Corby asked if the red light camera ordinance proposed for the April 22 agenda could include a "confrontation clause." She noted that she is trying to prevent future lawsuits by providing a process for violators to face their accusers, which is a Sixth Amendment right in the Constitution. The City Manager replied that such a clause or process could be included in the ordinance. He added that the proposal follows legislation and similar ordinances being enacted in the state.

Mrs. Corby asked if staff is aware of the margin of error with red light cameras. The City Manager replied that he does not know, but would be happy to report that information.

Council Member Mark LaRusso congratulated Planning and Economic Development Director Cindy Dittmer for being recognized in the "Up-And-Comers" category of the 100 most influential business leaders (Spacecoast Business magazine, April 2008 edition).

7. Public Comments

Frances Franklin, 4610 Lake Waterford Way, President, Lake in the Woods Condominium Association, reported that the residents are concerned about excavation and landscape work being done on Stack Boulevard and Palm Bay Road, south of their complex. Lake in the Woods is a green development with lakes, wildlife, excellent drainage, and no flooding problems. The Association would like to know what the plans are for the retention pond, what agencies are involved, why every tree was removed prior to a permit being applied for, and why the residents were never notified. They are experiencing continuous noise from pumps and would like assurances that the buffer of trees will be restored, natural vegetation will be added around the pond, and the project will not cause drainage/flooding problems on their property.

Mayor Goode said that this is a Florida Department of Transportation project and the City has no jurisdiction. The City Manager reported that he is not sure of the level of permitting FDOT is required to receive from local governments. He added that Assistant City Engineer Keith Cunningham made several calls to FDOT on behalf of the Association and written answers will be issued in the near future.

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George McChesney, 4560 Beck Lake Trail, Vice President, Lake in the Woods Condominium Association, informed Council that Mr. Cunningham has been very responsive. Mr. McChesney advised Council that staff from the City said FDOT needed a permit before cutting down trees and staff from St. Johns River Water Management District indicated that the property is being dewatered without a permit.

Mr. McChesney submitted before and after photographs of the site and thanked Council for allowing him to go on record with this issue.

The Mayor confirmed that City staff will continue its dialogue with FDOT.

7.1 Presentation to Council: Annual report to City Council from City Boards.

**a. Melbourne Downtown Community Redevelopment Agency Advisory Committee**

Chairman Jack Ryals introduced committee members who were present. He reported that in 2007 the committee held 11 meetings, considered 40 agenda items and conducted three workshop meetings. The committee's 2007 accomplishments include: Phase III streetscape; entrance feature; site furnishings; Front Street Park improvements; pilot facade program; community policing program; parking garage lease agreement; C-3 zoning initiative; parking management plan; and Henegar Center community workshop.

Mr. Ryals displayed a map showing the 2007 project areas, the Community Redevelopment Area boundaries and the existing retail core area. The committee's goals and objectives for 2008 include: complete Strawbridge medians project; begin North Riverview streetscape project planning and design; continue and expand facade improvement program; Campbell Park improvements; create merchant wayfinding signs in the Downtown area; and the Henegar Center/Strawbridge building plan.

The committee's challenges and requests include: tax revenue decreases as a result of Amendment 1; Strand v. Escambia County ruling that limits ability to borrow; and the recognition of the importance of CRA trust fund as a partnership in leveraging County tax dollars, grant funding and in-kind donations.

Council Member John Thomas said that the goals and objectives do not include any activity south of Crane Creek. He asked if there are any plans for this area. Mr. Ryals replied that a portion of the facade improvement program will occur in the southern portion of the district. The remainder of the projects planned for that area will need to be included in the Comprehensive Plan.

Council Member Cheryl Palmer asked if there has been any discussion about building public restrooms. Mr. Ryals said that public restroom facilities have been a concern for years. He reported that the public parking garage has been identified as a possibility. In the past, there was talk about a "community gathering area" near the Henegar Center; however, current discussions are focusing on the garage.

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In response to Council Member Joanne Corby, Mr. Ryals said that the north area and the southern expansion area are all considered one redevelopment area. Mrs. Corby noted that the north area will expire in 2022 and the southern expansion area will expire in 2031. Mr. Ryals said that although they are not two separate entities, Council elected to put a time certain ending on the CRA. The original district began in 1982 and the southern expansion area was created in 2006.

Mrs. Corby said that she is assuming since there are two different dates, the bases would be different. Mr. Ryals agreed and said the base of the original area is 1982 and the base of the expansion area is 2006. Mrs. Corby asked if there are two different amounts of money in each area. Mr. Schluckebier replied yes and stated that the base of the new area started when the district was expanded. Mrs. Corby asked if she could receive a breakdown of the finances that have gone into that area, and the City Manager replied yes.

**b. Melbourne Housing Authority**

Ron Sellers, Executive Director, Melbourne Housing Authority, introduced members from the Housing Authority present in the Council Chamber. Mr. Sellers informed Council that the Melbourne Housing Authority's mission is "to provide eligible families and individuals with adequate and affordable housing, economic advancement, and homeownership opportunities in a safe, drug-free, and suitable living environment without discrimination."

In order to achieve this mission, the Authority will: recognize residents as its ultimate customer; improve management and service delivery efforts through effective and efficient management by staff; seek problem-solving partnerships with residents, community, and government stakeholders; and apply resources to the effective and efficient operation of its programs. The Melbourne Housing Authority categorizes assisted families in all programs by income in one of the following groups: extremely low income (less than 30% of the area median income), very low income (greater than 30% but less than 50% of the area median income), low income (greater than 50% but less than 80% of the area median income) and over income (greater than 80% of the area median income). The area median income is \$61,300.

Continuing, Mr. Sellers identified management objectives, provided detail on the public housing waiting list, and outlined financial resources. He explained that significant events last year include loss of 10 units at Tucker Heights and relocation of 68 residents from Ramshur Towers. Regarding Tucker Heights, the residents were relocated to other Authority properties and the Authority is exploring options for replacing the units. The Ramshur Towers residents were relocated locally to other public housing units or affordable units in the County utilizing housing choice vouchers. He noted that all remain eligible for possible move to Silver Sands upon completion.

Mr. Sellers concluded by identifying their future challenges: 1) Transition to asset management. This represents a significant change in how they operate, and it will require the support of local stakeholders to be successful. 2) Silver Sands construction. Groundbreaking for Silver Sands is expected this summer in the June/July timeframe.

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Mrs. Palmer asked Mr. Sellers what the Housing Authority is doing in the area of crime prevention. Mr. Sellers replied that they are working towards increasing community involvement and getting citizens to play an active role in taking back their community. Additionally, they continue looking for ways to expand activities for youth in their multi-family developments. He commented that positive activities help reduce crime.

Mrs. Corby asked if decentralizing the units would help with affordable housing initiatives and issues the Housing Authority is facing. Mr. Sellers replied that asset management will require them to manage at the property level. Currently they receive their funding at the Housing Authority level. He added that it's going to be challenging and demanding.

Mrs. Corby asked if having mixed unit communities would help. Mr. Sellers stated that Silver Sands is a good example of that. And, they plan to expand the inventory of affordable housing in the community by including some low-income units in a mixed finance development that would also include tax credit units and market rate units.

Mrs. Corby said she would support the opportunity for Mr. Sellers to return and conduct perhaps a workshop to explore one issue at a time. Mr. Sellers replied that asset management is drastically different from the way the Housing Authority has done business. It will be extremely important for them to educate the community stakeholders on how this will change the way they operate. He concluded by saying that he looks forward to returning and providing information.

Relative to teaming, Council Member Richard Contreras recommended that information also be shared with the newly created Affordable Housing Advisory Committee.

**c. Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee**

George Alexander, Chairman, introduced the members from the committee. The advisory committee was created in 2000. They conducted 12 regular meetings last year and enjoy strong support from the merchants' association, crime watch and the community. Projects and accomplishments for 2007 include: Eau Gallie Square; Eau Gallie Pier, Eau Gallie art district overlay, successful farmers market, Art Works special event; and creation of guidelines for use of the Eau Gallie Square and Pier.

The 2008 projects include: finalize Eau Gallie art district overlay; encourage public art; complete benches/site furnishings; implement parking study recommendations; and the Pineapple Park project.

Mr. Alexander concluded by identifying the committee's 2008 challenges and recommendations: passage of Amendment 1; Strand v. Escambia County ruling, which affects borrowing; and continued strong fiscal and policy support.

Mrs. Corby asked if the advisory committee has discussed having a police officer in Downtown Eau Gallie, similar to Downtown Melbourne. Mr. Alexander replied that the

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redevelopment fund currently pays for a parks maintenance employee. The fund has only been in existence since 2000 and they have quite a few years to grow before they reach the point of needing police protection.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2008-11 (A&V No. 299): (Second Reading/Public Hearing) An ordinance vacating a 50-foot wide portion of an unimproved, platted right-of-way between Lots 15 and 16, Block 1 of the Lindsay's Subdivision. (Steven Casanova - 2325 Babcock Street) (First Reading - 03/25/08)

City Attorney Paul Gougelman read Ordinance No. 2008-11 by title. There were no disclosures from Council and no comments during the public hearing.

Moved by Contreras/Meehan for approval of Ordinance No. 2008-11.

Mrs. Palmer pointed out that she objects because this is a large piece of park-like property that the City is giving away.

The question was called. The roll call vote was:

Aye: Contreras, Thomas, Meehan and Goode

Nay: LaRusso, Palmer and Corby

Motion carried.

9. ORDINANCE NO. 2008-12 RECLAIMED WATER RATES: (Second Reading/Public Hearing) An ordinance amending Chapter 32, entitled "Utilities" by increasing the current flat monthly rate for reclaimed water; establishing a requirement for meters to be installed on all new reclaimed water services; and establishing a monthly service charge. (First Reading - 03/25/08)

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

Moved by Palmer/Corby to deny Ordinance No. 2008-12.

Mrs. Palmer said that in spite of promises by staff that connection to reuse would only be for new subdivisions in response to a voluntary request by a developer, she believes at some time in the future this will outlaw irrigation wells and everyone will be watering with reclaimed metered water.

Continuing, Mrs. Palmer said that Council was told this would be an amenity for new subdivisions. A developer could have the reuse lines installed for irrigation. At that point, those new homeowners would tie in to the line and be metered for a monthly fee for using reclaimed water to irrigate the property. However, if and when we start putting in those

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lines, she believes it will be the same as City water lines – if that line runs past your house, you will be required to connect.

Mayor Goode offered that Florida is in a water shortage. Reuse water is cheaper than new water. He added that he's had an artesian well in his yard for years; however, he should be using reclaimed water rather than potable water from the aquifer. It's an environmental water issue rather than a money making issue.

Deputy City Manager Howard Ralls explained that this ordinance only addresses fees. It increases the charges for reclaimed water, requires new service to be metered, and establishes a monthly service charge and monthly gallonage charge for all new customers.

In response to Council Member Mark LaRusso, Mr. Schluckebier confirmed that this amendment relates to rates. For general information, he added that the St. Johns River Water Management District is requiring the City to send more reuse water out into the system instead of using deep well injection. The City's permit for deep well injection has a very short life. Additionally, the cost of doing something environmentally sound with reuse continues to go up. As the rates for potable water increase, the demand will also increase.

The City Manager stressed that the City is not trying to interfere with anybody's right to have a well and we're not trying to run reuse lines into existing neighborhoods. This ordinance pertains to new subdivisions and new line extensions in those areas in the future.

Mrs. Palmer said she would support this ordinance if she could be assured that in the future we would not require anyone who has an adjacent line to tie in. She repeated that her concern is that we will eventually have a mandatory hook up wherever we run a line.

The question was called. The roll call vote was:

Aye: Palmer and Corby

Nay: Contreras, LaRusso, Thomas, Meehan and Goode

Motion failed.

Moved by Meehan/Thomas for approval of Ordinance No. 2008-12.

A brief discussion followed regarding deep well injection. Mr. Ralls confirmed that the City has only one deep injection well, which is located at the Grant Street Plant. Effluent is pumped to Grant Street and then into the injection well. If the permit is ever rescinded, we would need to find an alternative to effluent disposal.

The question was called. The roll call vote was:

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Aye: Contreras, LaRusso, Thomas, Meehan and Goode

Nay: Palmer and Corby

Motion carried.

NEW BUSINESS

10. COUNCIL ACTION RE: Approval to extend the continuing annual contract for cured-in-place pipe rehabilitation services, Insituform Technologies, Inc., Jacksonville, FL - \$838,412.

Utilities Engineer Michelle Shultz advised Council that staff would like to extend the continuing annual contract for a third year. Funding is available as outlined in the agenda report.

Moved by Thomas/Contreras for approval to extend the continuing annual contract with Insituform Technologies, Inc. for cured-in-place pipe (CIPP) rehabilitation services (RFP-10-111-0-2005) for a third year in the amount of \$838,412. Motion carried unanimously.

11. COUNCIL ACTION RE: Approval for emergency repair and replacement of failed stormwater pipe on University Boulevard, Project No. 64206, Don Luchetti Construction, Inc., Melbourne, FL - \$84,752; and transfer of \$93,228 from Miscellaneous General Construction Projects to supplement this project budget.

Utilities Engineer Michelle Shultz was available for questions.

Moved by LaRusso/Meehan for approval of repair work by Don Luchetti Construction, Inc. in the amount of \$84,752 and a transfer of \$93,228 from the General Fund Miscellaneous Capital Improvement Projects to provide funding for the replacement of 270 feet of storm piping along University Boulevard. Motion carried unanimously.

12. CONSENT AGENDA:

Mayor Goode reported that Council Member Contreras removed Item “g” from the agenda.

Moved by Meehan/LaRusso for approval of Items “a” through “f” as recommended. Motion carried unanimously.

- a. Purchase of valve insertion and line stop equipment, adapter kits, cutters, ductile iron pipe, and fittings for Water Distribution, Hydra-Stop®, Alsip, IL - \$96,888.18.
- b. Purchase of 29,700 pounds of CIBA LT22S dry polymer for Water Production, CIBA Specialty Chemicals, Suffolk, VA - \$2.13/pound, total cost of \$63,261.

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- c. Purchase of 10 Dell Latitude XL tablet computers for the Code Compliance Division, Dell Computer Systems, Round Rock, TX - \$2,576.59/each; and 10 HP470wbt mobile 12-volt printers, Southern Computer Warehouse, Marietta, GA - \$286.68/each; total cost of \$28,632.70; and transfer of \$28,533 from Code Compliance to Information Technology.
- d. Approval of an appropriation of \$500 from the Law Enforcement Trust Fund to provide funding to support Florida Missing Children's Day in Tallahassee on September 8, 2008.
- e. Approval of an appropriation of \$2,760 from the Police Department Law Enforcement Trust Fund to finance travel for members of the Powell Neighborhood Watch Group to attend the Annual Florida Neighborhood Conference in Tallahassee, June 26 - 28, 2008.
- f. Resolution No. 2092: A resolution authorizing the City Manager to submit an application to the U.S. Department of Justice for Bulletproof Vest Partnership Grant Program funding in the amount of \$8,203.20 with matching funds of \$8,203.20 for the purchase of 30 vests for the Melbourne Police Department and two vests for the Melbourne Airport Authority.
- g. Resolution No. 2093: A resolution supporting the proposed Florida Senate action to the United States House of Representatives confirming and accepting the decision of the United States Air Force to award the tanker contract to Northrop Grumman Corporation and EADS North America. (See Item #13 for action.)

13. ITEMS REMOVED FROM THE CONSENT AGENDA

- g. Resolution No. 2093: A resolution supporting the proposed Florida Senate action to the United States House of Representatives confirming and accepting the decision of the United States Air Force to award the tanker contract to Northrop Grumman Corporation and EADS North America.

Mr. Contreras declared a conflict of interest because Northrop Grumman is his employer and he would receive direct monetary benefit in whole or in part as a result of this resolution.

Moved by LaRusso/Meehan for approval of Item "g." Motion carried unanimously. Mr. Contreras abstained from voting.

14. RESOLUTION NO. 2094: (Public Hearing) A resolution designating 1149 Houston Street (HD-2008-01) as a historic resource. (Owners - Maria & Allan Whitehead)

Planning and Economic Development Director Cindy Dittmer reviewed the item. The Historic Preservation Board voted unanimously to recommend approval.

Mayor Goode opened the public hearing.

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Allan Whitehead, property owner, asked Council to approve the resolution. In response to Mr. LaRusso he noted that he has lived in this home for a little over two years.

Moved by LaRusso/Meehan for approval of Resolution No. 2094. Motion carried unanimously.

15. RESOLUTION NO. 2095: A resolution of intent to reinstate membership in the Florida Retirement System.

The following is an excerpt from the agenda report: *At the February 28, 2008 budget workshop, the City Council approved the recommendation to rejoin the Florida Retirement System (FRS) for general employees. The agenda materials contain an analysis of the benefits and reporting on the process of reinstatement of general employees in the FRS.*

*The City opted out of the FRS in 1996 and formed its own General Employees' Pension Plan for new employees not covered by the police or fire pension plans. Since that time the FRS has generally had lower employer contribution rates than the General Employees' Plan. Staff calculated that for the past 3-½ years, total savings if the City had been in the FRS as compared to the General Employees' Plan would have been \$2,251,000, or an average of \$643,000 per year. Staff estimates annual savings based on the current year's rates of the two plans to be about \$400,000. In addition to the expenditure reduction, reinstatement in the FRS aids the City in recruitment because current FRS members in other jurisdictions would have a seamless transition when hired by Melbourne.*

*An important part of the procedure is that each active eligible member in the General Employees' Pension Plan must choose whether to join FRS or to remain in the local plan. An information program will be implemented so that employees will have information to make their decision. By joining the FRS current employees will have the opportunity to be in a much larger, more stable and portable pension plan.*

*A resolution of intent to reinstate membership in the FRS is a necessary step to proceed. The resolution authorizes the City Manager to conduct the balloting to determine which General Pension Plan employees wish to join FRS and take all necessary steps to proceed with such a transition.*

Mayor Goode said that this is not a public hearing item; however, Scott Ellis has asked to speak.

Moved by Corby/Palmer to allow the Clerk of Court to speak. Motion carried unanimously.

Scott Ellis, 1309 Breeze Lane, said he is not appearing before Council as the Clerk of Court. He noted that he has several questions on this item and asked if staff could send him information. His questions include: how many buy-ins has the City had into

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Melbourne's retirement system; how much does it cost for someone to buy into Melbourne's plan versus the cost to buy into FRS; and is Melbourne going to pick up that difference or will we back bill the employees on that issue.

Mr. Ellis said as he understands the item, we will have a split plan. Not everyone will move to FRS. He pointed out that our retirement fund is almost double funded. After the City buys back into FRS for \$6 million, we will have approximately \$7 million remaining in the fund. Mr. Ellis said he is curious why actuary studies have not been conducted, which would have led to lower contributions in the City retirement fund. He concluded by saying this is going to be a long process.

The City Council asked that staff provide Mr. Ellis with the requested information. Mr. Schluckebier reported that the City receives an actuarial study on the General Employees' Pension every year. He doesn't believe it is substantially over-funded and any implication or statement to that effect is erroneous.

Mayor Goode commented that employees in FRS remained in FRS when the City opted out. The employees who have been in the General Employees' Pension for several years aren't going to go back to FRS, because they would have to start over. There won't be a great deluge of people going back to FRS.

Mr. Ellis pointed out that vesting would be quicker with the state. Mr. Schluckebier disagreed and said both are the same – six years.

Mrs. Corby said she has quite a few concerns and comments. The resolution covers the General Fund employees; therefore, it's eliminating the option for any other employees to participate in FRS plan. Following a brief discussion, the City Manager clarified that there is a category of employees called "general employees", but that category is not the same as General Fund employees.

Mrs. Corby pointed out that the report indicates which employees would not be eligible. She would like for this to be written so that fire and police can have the option – recognizing that negotiations would be required. One of the main reasons is that the Florida Retirement System provides for a cost of living adjustment (COLA). Since she has been on Council, there has been a strong desire for police and fire to have a COLA. She would like to know the process for bringing them on board and allowing them to have the choice.

Additionally, the agenda materials state that "plan members who have purchased past FRS service for inclusion in the City's plan will automatically have that FRS time recorded and credited in FRS...there is currently one eligible plan member who has purchased FRS past service for inclusion in the City's plan." She said she doesn't need to necessarily know who that member is, but the materials further indicate that "there are currently four eligible plan members who have purchased other agency past service for inclusion in the City's plan." Mrs. Corby asked if the one member is included in the four eligible for past purchase time.

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Mr. Schluckebier replied that staff can provide an answer. Mayor Goode pointed out that this is a simple deal and he believes more is being made of it.

Mrs. Corby replied that she's not saying this is not a good move. She just has questions that need to be answered. Continuing, Mrs. Corby said the materials state "the Police Chief and the Fire Chief each opted out of their respective plan to join the General Employees' Pension Plan." Backup indicates we have 12 members who would not be given the option. She believes we should be fair and equal across the board. If employees choose to participate, they should be given that option and she would like to see that change.

Mrs. Corby recalled that the City Manager said the City's policy is to allow purchase of up to six years. Mr. Schluckebier said no; however, he did previously note that we have a six-year vesting. He added that our plan currently allows people to purchase up to 10 years. Our plan was revised two years ago to accommodate the City Attorney, who previously had an optional annuity.

Mrs. Corby referenced Ordinance No. 2006-107, which includes the City Attorney in the management category and increases the purchase of past service from five years to 10 years. She reported that the City Manager and the Police Chief took advantage of that. The City Manager invested \$113,000 to purchase 10 years and the Chief invested roughly \$190,000 to take 10 years of service. As an example, Mrs. Corby said that the City Manager, who was employed in Melbourne in 2002, would now technically be employed with us for 17 years.

Mr. Schluckebier disagreed and said he has been employed with Melbourne slightly more than five years. He reported that he purchased 10 years of service out of his own money – in accordance with the Code and our outside consultant's actuarial rates.

Mrs. Corby asked if an actuarial study was done before this transaction occurred. The City Manager replied yes. Mrs. Corby said she has a letter from the actuary, Foster, and it states, "that because changes do not result in change in the valuation, it is our opinion that a formal actuary impact statement is not required." Mrs. Corby said there was no actuary study conducted when this ordinance was passed. The City Manager said no actuary study was needed for the ordinance because any further action would require individual specific actuarial studies, as was the case with his purchase of service.

Mrs. Corby said maybe that's why she's so confused. During the February 28 workshop meeting, she asked if there would be cost involved in changing the pension plan and the City Manager's response was "yes." She said the City Manager also indicated that an actuary statement would be required; however, the City hasn't received one in the information that has been presented. Continuing, Mrs. Corby said that the City is going to be responsible for paying back the money that was spent by the employee with interest. It is her understanding this has not been a common practice.

Mr. Schluckebier replied that this is exactly and precisely a normal regular practice. Mrs. Corby interrupted and asked what percent interest. Mr. Schluckebier said those are set

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in statute, they are not discretionary. Mrs. Corby said if that is the case, there should be no secret. Council should know the percent of interest when we pay back money to the employees who purchased past years of service.

Discussion continued.

Mrs. Corby made a motion to postpone this item until Council receives more information. She stated that there are so many unclear things that are not sitting well with her.

Deputy City Manager Amy Elliott said that this pension is made up of members of all the funds in the City. The only people who would not be eligible to participate and transfer into FRS are the Police and Fire Chiefs and the Airport police. The Police and Fire Chiefs can't participate because they have plans available in the Police and Fire Pension Systems or the General Employees' Plan. The Airport police can't participate in FRS based on an FRS rule.

Continuing, Mrs. Elliott said that Foster and Foster's report, which indicates no impact, relates to adoption of the ordinance. Effectively, that was their actuarial statement. Foster and Foster did an analysis to determine there was no impact. There is always a separate actuarial evaluation for a member who requests the purchase of past service. They pay the actuarial determined amount of money to go into the plan to purchase those years of service. That's for anybody, regardless of the level of employee.

Mrs. Elliott pointed out that this resolution states the intent to rejoin the Florida Retirement System to take advantage of the more favorable contributions rates. Over practically all the years since we got out of FRS the rates have been lower in the Florida Retirement System than the General Employees' Plan. For regular members our current rate for the General Employees' Plan is 15% and in FRS, it's 9.85%. There are different rates for different classes. Mrs. Elliott stressed that this is a big gap in terms of expenditure reductions that we would realize if we moved to the Florida Retirement System.

Regarding refunding any money that's paid, Mrs. Elliott explained that is an FRS provision. The City would have to refund any money paid to purchase prior service. That employee would then pay the money to FRS if they want to purchase prior service with FRS. The four members outlined in the report purchased service from other agencies and one member purchased it from an agency that also was with FRS. That's the distinction; however, she will verify that information.

Mrs. Palmer said that Mrs. Corby would like to table this item for more information.

Moved by Corby/Palmer to (postpone) this item until Council receives more information.

Mrs. Palmer asked Mrs. Corby to submit her questions in writing and that Council receive a copy of the questions and answers before this item is returned. Following a brief discussion, Council decided that if Mrs. Corby submitted her questions by April 23, the item could return on the May 13 agenda.

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The question was called on the motion to (postpone) this until the May 13 Council meeting. The roll call vote was:

Aye: LaRusso, Palmer and Corby

Nay: Contreras, Thomas, Meehan and Goode

Motion failed.

Mr. LaRusso said he voted to postpone since he was not present at the February workshop meeting. He would like the benefit of receiving additional information.

Mayor Goode said the FRS retirement system is in concrete and it's a proven entity. He added that he believes he is seeing smoke and mirrors with this issue. He briefly discussed his experience with FRS. He is retired from that system, draws a check from that system, and previously purchased past service in that system.

Mrs. Corby stated that this has nothing to do with the stability of the FRS plan or the plan itself. She pointed out that the City is going to be spending \$6.2 million and there is confusing information.

Moved by Contreras/Meehan for approval of Resolution No. 2095.

Mrs. Palmer said this item seemed cut and dried to her. However, because questions have been raised, she believes it is Council's duty to have those questions answered prior to voting.

Mr. Contreras said he takes his questions to the individual rather than vetting them out in this fashion. Albeit public funds, discretion would have been in order in terms of naming names. He asked Mrs. Elliott if she is going to answer these questions when she receives them. Mrs. Elliott replied yes.

Mrs. Corby replied and said there is no need for her to submit her questions. Council apparently feels comfortable with the information that has been presented.

Continuing, Mrs. Corby said that Ordinance No. 2006-107, which she believes Council Member Contreras voted for, includes the Police Chief but omits the Fire Chief. Additionally, Airport police officers are going to be excluded from joining FRS, and they are not included in the Police Pension Plan. Rather than being selective, she would like to go across the board with this change. Mrs. Corby concluded by saying all of this information is public record, which she requested through the City.

Mr. Contreras replied that he believes he was not the only member on Council who voted for that ordinance. He expressed displeasure that Mrs. Corby would specifically identify him. **(Note: Ordinance No. 2006-107 was adopted October 10, 2006. At that meeting, it was moved by Walker/Hand to approve the ordinance. The motion**

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**carried unanimously with Contreras, LaRusso, Meehan, Walker, Palmer, Hand and Goode voting aye.)**

The question was called. The roll call vote was:

Aye: Contreras, Thomas, Meehan and Goode

Nay: LaRusso, Palmer and Corby

Motion carried.

Recessed: 8:18 p.m.

Reconvened: 8:24 p.m.

16. ORDINANCE NO. 2008-13 (Z-2008-1129AD/LDR-2008-02/FOC-2008-02) RV PARKING: (First Reading) An ordinance amending Appendix B of the City Code entitled "Zoning," amending Article II by revising and expanding the definition of recreational equipment; and amending Appendix D of the City Code entitled "Land Development Code," as it relates to parking, storage or use of recreational equipment and recreational vehicles. (Applicant - City of Melbourne) (P&Z Board - 03/20/08)

The City Attorney read the ordinance by title. Mrs. Dittmer introduced the item. The following is an excerpt from the agenda report:

*These changes are proposed to assist in clarification of the allowances for the parking of recreational equipment and vehicles within residential areas. The current language in the Code regarding this issue has been in place for a number of years. Over the past several years, several issues have been brought before the Zoning Board of Adjustment for clarification of past interpretations of the City Code. Based upon direction provided by the Board of Adjustment, staff has prepared changes to the Code to assist with the determination of the permitted locations to park recreational equipment/vehicles.*

*The following changes are proposed: amend the definition of "major recreational equipment" to include several new categories of equipment that have previously been interpreted as included in the definition; clarify the allowable location to park recreational equipment/vehicles; add language to set standards for the time frame of loading/unloading of recreational vehicles; add language to allow parking of recreational equipment/vehicles when parked behind a six-foot, 100% opaque fence; add language to allow recreational equipment/vehicles to be parked on corner lots of major roadways when screened by a six-foot, 100% opaque fence; and add language to prohibit parking of recreational equipment/vehicles in the public right-of-way.*

*The Planning and Zoning Board voted four to three to approve the recommended changes. Of the three dissenting votes, two members did not provide any comments. The third member gave the opinion that large motor homes should not be allowed anywhere in the City on residential property because they are an aesthetic eyesore.*

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*During the public hearing, four people spoke on the issue. Two were in favor of the changes and cited personal situations, which would gain relief from the proposed changes.*

*One speaker, a member of the Board of Adjustment, presented the opinion that owners have options for parking large RVs and boats because storage facilities are plentiful. Additionally, the member commented that there is a potential viewing of these vehicles from scenic corridors. All three speakers live in the same deed restricted neighborhood. The fourth speaker, also a member of the Board of Adjustment, felt like the proposal was too complicated and stated that the language should be more clear with a specific size of vehicle or boat that could be parked anywhere and everything else should be parked in the side or rear yard.*

*Several Planning and Zoning Board members thought this should be a homeowners' association issue. Staff explained that City Code regulations set minimum standards, while subdivisions with homeowners' associations have more restrictive regulations.*

Mrs. Dittmer confirmed for Mr. LaRusso that typically regulations from a homeowners' association far exceed City Code requirements. The City's requirements generally affect non-deed restricted subdivisions.

Mrs. Palmer asked if the basic change is that the owner of a corner lot will have to put up an opaque fence. Mrs. Dittmer replied that the owner of a corner lot cannot currently park a recreational vehicle in the side corner yard. The ordinance will allow that owner to install a six-foot fence and park RV equipment behind the fence as long as it can't be viewed.

Mrs. Palmer asked what precipitated this change. Mrs. Dittmer replied that this issue has gone before the Zoning Board of Adjustment several times for various interpretations. The main issue relates to staff's interpretation of the "front building line." It is straight forward on square or rectangular lots; however, issues with odd shaped lots and lots adjacent to rights-of-way distort where a front building line runs. This ordinance clarifies that definition and amends the definition of recreational equipment to include a golf cart.

Mrs. Corby pointed out that a six-foot fence won't block a recreational vehicle. She asked for assurance that a homeowner can park RV equipment on their property behind a six-foot fence. Mrs. Dittmer said currently RV equipment can't encroach into the side corner yard, which typically has a 20-foot setback. This ordinance does not limit where an RV can be parked today. The change will make the regulation more flexible and clarify language.

In response to Mr. LaRusso, Mrs. Dittmer agreed that the provisions in the ordinance also apply to boats.

Mayor Goode opened the public hearing.

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Mike Nowlin, 313 Live Oak Lane, said that he is a member of the Board of Adjustment. He reported that the board heard several cases on this issue. When he pushed the City for a definition of “major” recreational vehicle, there was confusion and no one could provide a definition. The other issue relates to the “front building line.” It’s very unclear, especially with side corner setbacks.

Mr. Nowlin said he was looking for the City to come up with a definition of “major” recreational vehicle and to define the front building line as the front building line of the address. That would simplify the Code, make it easier for the public, and take away all the gray area for Code Enforcement personnel. The proposal before Council will cause problems with Code Enforcement personnel. Property owners’ rights will be taken away if extra allowances are made or areas taken away where people can park. This ordinance will create undue burden on the property owners and will cause a flood of variance requests.

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

Moved by Thomas/Meehan for approval of Ordinance No. 2008-13.

Following discussion, Mr. LaRusso noted that Mr. Nowlin is opposed to this ordinance based on his personal experience as a member of the Board of Adjustment.

Mrs. Palmer informed Council that a while back, for her own personal benefit, she drove through neighborhoods in the City to determine how many and what size boats were parked in driveways and in front of the house. From the lowest economic level to the highest economic level, every neighborhood in the City – outside homeowners’ associations – had RVs parked in driveways and parked illegally, which tells her the residents do not like our Code. Therefore, she doesn’t want to tighten up the regulations.

Mrs. Meehan said she has heard from people that don’t have homeowners’ associations that we need to do a better job regulating the parking of RV equipment and boats.

Mrs. Palmer responded that we don’t hear from the people who are enjoying their RVs, their homes, and their property. They are going out and having fun – fun that doesn’t entail police activity. These are people enjoying their life.

Mrs. Corby pointed out that the (catchline) of Appendix D, Section 9.74, City Code, indicates “minimum standards for the design of off-street parking areas.” She stated that our Codes need to be clear, precise and simplistic. This item is not clear, it’s confusing, and she won’t support the change. Mrs. Corby added that she doesn’t want to see a situation in the City where neighbors are pitted against neighbors.

Responding to Mr. LaRusso, Mrs. Dittmer said that this ordinance is not the result of Code complaints. It is an on-going issue about an interpretation of the Code. Two of the people who spoke during the Planning and Zoning Board meeting are property owners who live in the same subdivision who desire this change. The other speaker, also a

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member of the Board of Adjustment and resident of that same neighborhood, does not like this proposal because she feels it will allow too much visibility of RVs.

Mr. LaRusso asked if this item was vetted before the Board of Adjustment. Mrs. Dittmer said the Zoning Board of Adjustment reviewed this item; however, they did not vote on it because that is not their role. They had a good general discussion and the members were split on their opinion. This Code language was taken to the Planning and Zoning Board and they voted four to three to approve. Additionally, the members of the Planning and Zoning Board don't want to see recreational equipment in any residential area.

Mrs. Corby asked if it's possible to make this ordinance clearer. Mrs. Dittmer said that staff from Planning, Code and City Attorney spent time drafting this language. All feel the best language was selected. Additionally, Code Enforcement personnel confirmed they are fine with the language.

The question was called. The roll call vote was:

Aye: Contreras, Thomas and Meehan

Nay: LaRusso, Palmer, Corby and Goode

Motion failed.

17. ORDINANCE NO. 2008-14 BUSINESS TAX RECEIPTS: (First Reading) An ordinance amending Chapter 19 of the City Code entitled "Licenses," by providing for the repeal of the application fee and adjusting the schedule of rates.

City Attorney Paul Gougelman read the ordinance by its title. Director of Finance Michele Ennis reviewed the item. The following is an excerpt from the agenda report:

*At the February 28, 2008 Budget workshop, staff advised that it would be examining current revenue for possible increases. The Financial Services Department recommends an increase in Business Tax Receipts (formerly known as Occupational Licenses). These rates have not been increased for over 10 years, although State Statute authorizes up to a five percent increase every other year.*

*The proposed ordinance provides for a five percent increase in the existing rate schedule as allowed by Florida Statutes. The increase will be effective for licenses issued for the fiscal year beginning October 1, 2008. The typical receipt will increase by approximately five dollars annually. The ordinance also eliminates the application fee, which has historically been applied to the initial Business Tax Receipt. General law does not expressly permit the City to collect an application fee. It is estimated that these changes would generate \$50,000 additional revenue next fiscal year.*

*The statute that authorizes this rate increase requires a majority plus one vote for approval.*

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Mr. LaRusso stated that our nation is on the verge of the largest tax increase unless Congress and the next President agree to continue the Bush tax cuts. If these cuts are allowed to expire, the personal income tax burden will go up by 25%; the marriage penalty will be re-imposed; the child tax credit will be reduced; long term capital gains will increase; and the alternative minimum tax will reach deeper into the middle class.

With the future being so uncertain, Mr. LaRusso said he does not agree with increasing our fees to businesses that are struggling for economic growth. His commitment is to economic growth for the City, and he won't support this increase.

Mrs. Palmer said that small businesses are the backbone of the nation and our community. They provide the jobs that enable people to live and pay their taxes here. Mrs. Palmer commended staff for being creative in coming up with additional revenue; however, she can't support anything that will put a further burden on businesses in our community. We want them to succeed, provide jobs and keep our local economy going.

Mrs. Corby pointed out that this fee is simply a tax and as a City we should make it easier for people to want to do business in Melbourne.

Moved by Palmer/LaRusso to deny Ordinance No. 2008-14. The roll call vote:

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

Motion carried unanimously.

18. COUNCIL DISCUSSION RE: Consideration of procedures regarding the Daily Bread rezoning and conditional use request.

Note: City Council was provided with a list of ideas to consider for handling the public hearing. After extensive discussion, Council approved the following by consensus:

- The item will be scheduled on its own meeting date (for first reading and second reading of the ordinances).
- The venue will be changed. Council selected the Auditorium as its first choice. Staff will determine if there are any dates open at the Auditorium between May 14 and May 22 for a first reading date.
- The meeting will begin at 6:30 p.m. and adjournment will be set for 11:00 p.m., unless extended by vote of City Council.
- Order of presentations: The Planning and Economic Development Director will provide a presentation. The attorney representing the applicant will have up to one hour to make a presentation. The public will speak next. (The Mayor will arrange the order so that Melbourne residents speak first.) The applicant will finish with brief rebuttal/summation.

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- An alphabetical list of the people who have written the Planning and Zoning Board and City Council expressing their views on this issue will be prepared. The Mayor will indicate at the beginning of the meeting that their correspondence has been received and their views are on record. The list will be included in the minutes of that meeting. (This does not preclude anyone who has written from speaking.)
- Each speaker from the public will be allowed three minutes to address Council.
- Large groups will be encouraged to select a spokesperson.
- All speakers will be sworn in and placed under oath.
- Witnesses for the City and the Daily Bread may be cross-examined.

(Note: Following the Council meeting, the City established May 19 and June 3 as the public hearing dates. Both meetings will be held at the Melbourne Auditorium. Staff is aware that the Planning and Zoning notice on this item indicates that it will appear on Council's May 13 agenda. The item will be re-advertised and residents within 500' will be notified.)

Significant discussion that occurred in developing the procedures follows:

Mrs. Corby noted that Council also adopted procedures for the Parkway Place site plan public hearing. She recommended that Council consider adopting a standardized procedure, rather than having different procedures from one presentation to the next.

Attorney Gougelman informed Council that it will likely receive a petition on this item, which will require a 6/7 vote at second reading. Therefore, he recommended that meeting dates be established when all seven members can be present. Otherwise, the applicant may feel that due process was denied.

With regard to the order of presentations, Mayor Goode said that when the public addresses Council, he will arrange the speaking order so that residents of Melbourne speak first.

Mayor Goode asked if Council wishes to allow people to speak who have already submitted correspondence. Mrs. Corby said that there needs to be parameters or the public hearing could be endless. She would like standardized procedures and guidelines established that could be applied to any public hearing.

The City Manager said that, absent a procedure from barring people to speak, Council should remind people that they are on record (with their written comments). And, unless they have something new to add, please allow the next person to speak who may not yet be on record. By consensus, Council agreed.

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Mrs. Meehan asked how long the Daily Bread attorney took at the Planning and Zoning Board meeting to make her presentation. Attorney Gougelman replied one and one-half hours. He added that Attorney Kim Rezanka has indicated that she's trying to scale down her presentation.

Mayor Goode said he ran into Attorney Rezanka at an event over the weekend. He informed her at that time that this is not a social issue. Council will discuss the issue of whether to rezone a piece of property in Downtown Melbourne.

Attorney Gougelman noted that it's fine to tell the applicant they are limited to one hour; however, at the end of that one hour when they aren't finished and we impose the one hour rule, they will claim it's a matter of due process.

Mr. Schluckebier offered that these ideas were drawn up before the Planning and Zoning Board meeting. He has zero concern about conceding if the attorney for the applicant needs another thirty minutes. Additionally, City Council always has the option by affirmative vote to change a rule at a moment's notice. If the applicant is only two-thirds the way through their presentation, they should absolutely be given more time. The applicant is entitled to be heard on their issue.

Later in the discussion, Mayor Goode said that with regard to the procedures, the time allotted for the attorney representing the applicant will remain at one hour. This is based on Attorney Rezanka indicating to him that she planned to scale back her presentation.

With regard to cross examination, Attorney Gougelman said that the Daily Bread and the City are the only two parties in this process. Therefore, they are the only two groups that will need to accommodate for cross-examination.

Several Council Members asked the Mayor to consider having a staff person on the side with a timer. Timing would be that person's only duty during the meeting.

19. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole, 805 E. Palmetto Avenue, briefly discussed the Daily Bread rezoning/conditional use application. She informed Council that the Planning and Zoning notice indicates that it will appear on City Council's May 13 agenda. She agreed with moving the meeting to a larger location.

Council Member Thomas referenced the proposal he sent to Council dated April 3 regarding the water negotiations with West Melbourne and calling for Council's consideration in having an independent negotiator. He said his memo was based on comments that had come out of the West Melbourne City Council meeting last week and some information in the FLORIDA TODAY article on April 3.

Mr. Thomas said he has since met with the City Manager and separately with the City Attorney and it was relayed to him that in Friday's negotiations with West Melbourne,

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West Melbourne City Manager David Reynal, the City Attorney and Dr. Schluckebier all agreed that progress had been made.

Additionally, he learned today that in the interim agreement, West Melbourne agreed to pay capacity reservation monies for five developments. As he understands it, West Melbourne is in arrears. He asked the City Manager to comment.

Mr. Schluckebier said that there may be some mis-implication that Melbourne is not approving items. A detailed list of items that have been approved, which is voluminous, has been provided to Council. There is no shortage of items being approved relative to concurrency; however, there is a shortage of timely payment for those reservation charges, capital charges, etc. West Melbourne will be presented with a certified letter outlining the charges.

Continuing, the City Manager detailed the payments that have been received and the payments that are due, which are all outlined in the agreement reached a year ago. Melbourne is probably in the range of a half million dollars short with respect to timely payment by West Melbourne. That issue was raised with West Melbourne and they apparently were not aware of the commitments they made under that agreement to the extent that they thought they should issue a check for them.

Mr. Thomas said he believes having an independent negotiator could be extremely productive for this down the road. He stressed that we have an obligation to our other customers, such as Satellite Beach, Indian Harbour Beach, Indialantic, Melbourne Beach, etc. to be good stewards of our water system.

Mr. Thomas made a motion to hold a special meeting of this Council regarding the water issue. Once Council Members have been apprised on the situation, Council could make the decision on whether to have an independent negotiator. (He later withdrew the motion.)

Mayor Goode stated that he is violently opposed. He added that when he gets his half million dollars we can talk to them, but in the meantime, we've gone way overboard. Council has been apprised of the issue. West Melbourne owes us a half million dollars. The City of Melbourne has a fiduciary responsibility to the bondholders who have purchased tax-free municipal bonds in Melbourne. West Melbourne continues to annex more land and they can't even pay for what they have.

Responding to Vice Mayor Meehan, Mr. Ralls confirmed that a letter will be mailed to West Melbourne tomorrow with a due date of May 1.

Mr. Thomas said if there is a need for Council to hold a special meeting to bring members up to speed on this issue, he doesn't see any harm in meeting as a Council to air out the issues and decide how to proceed. There have been enough delays over the last couple years.

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Mr. LaRusso pointed out that such a meeting would be open to the public. He supports getting this resolved; however, he doesn't want to tip our hand any more. He wants West Melbourne to do what they are supposed to do in the confines of what we proposed. Half a million dollars is what we are owed. He added that he supports informing West Melbourne that they have five years to find another water source.

Mr. Thomas said he respects that and he wants to protect Melbourne's position to ensure that the citizens of Melbourne and customers of our system are protected to the highest degree. He pointed out that the City Manager's April 7 memorandum to City Council recommends that a special City Council meeting be scheduled in the next 30 days.

Following a brief discussion, Mr. Schluckebier said that we are making some progress, but West Melbourne needs to get their fiscal house in order.

A brief discussion continued and Mr. Thomas withdrew his motion. He reserved the option to bring up the idea of an independent negotiator later.


Council Member Mark LaRusso referenced the e-mail Council received from a member of the Code Enforcement Board expressing his views on a recent lien rescission approved by Council. The member states in the correspondence that the lien reduction represents "quite a bit of revenue lost to the City" and "with all the budget constraints we are facing in the City, we need to take a real closer look at perhaps the larger monetary cases." Mr. LaRusso pointed out that this is a board member appointed by City Council. He recommended that staff counsel the board member and the member offer a retraction of those statements in a public forum.

Mr. Schluckebier replied that those statements reflect that individual's opinion – not the direction of City Council and staff. He added that he is not certain counseling would change that person's opinion. Following discussion, the City Manager said that the minutes will reflect those statements are not at the direction of Council or staff.

20. ADJOURNMENT

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

The meeting adjourned at 10:07 p.m.



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City Clerk – 4/17/2008

Approved by Council: April 22, 2008 with note added to Item 15

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Attachment to official minutes: Memorandum of Voting Conflict form from Richard Contreras regarding Item 13 “g.”