

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 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. Reverend Darice Dawson, Florida Tech Protestant Ministries, 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 read and presented the following proclamations:

“National Safe Boating Week,” May 17 – 24; accepted by Jules Moquin, Commander, South Brevard Flotilla 42, U. S. Coast Guard Auxiliary.

“Johnson Middle School Community Problem Solvers Team” – The team will travel to Michigan State University May 28 – June 1 to compete with students from around the world in an International Community Problem Solvers competition. The proclamation was accepted by team members Dylan Pomichter, Allison Adams, Tricia Rogers, Harrison Cord and Sam Harbord.

“Emergency Medical Services Week,” May 18 – 24, 2008; accepted by Assistant Fire Chief Joe Sunday, Melbourne Fire Department.

Additionally the Beautification and Environmental Advisory Committee’s “We Noticed” award was presented to a representative of the River Run Christian Church, 1660 Croton Road, for outstanding landscaping.

5. Approval of Minutes - April 22, 2008 Regular Meeting

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

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

6. City Manager's Report

City Manager Jack Schluckebier reported that at the May 12 Space Coast League of Cities meeting, the executive board and the regular membership approved Melbourne's request to support the United States Air Force's award of the tanker contract to Northrop Grumman and EADS North America.

***Florida League of Cities Annual Conference*** – Council Member Richard Contreras said that, given the current budget situation coupled with his Council term concluding in November, he has voluntarily decided not to attend this year's annual conference.

***Melbourne/West Melbourne Water Negotiations*** – Council Member Mark LaRusso referenced West Melbourne's threatened lawsuit against the City of Melbourne. He pointed out that on May 1 Council received a memorandum from Council Member John Thomas in coordination with a Council Member from West Melbourne, which outlined a roadmap for negotiations. However, on May 3, West Melbourne held a special meeting and voted unanimously to bring suit against Melbourne. Mr. LaRusso stated that we have reached an end.

In response to questions raised by Mr. LaRusso, the City Manager provided the following information: the interim agreement contains several provisions – some have been fulfilled by West Melbourne and some remain to be fulfilled; the City does not know why West Melbourne is suing us because West Melbourne has not given us the courtesy of a written complaint; and Melbourne expends 80-100 hours in staff time each month preparing for negotiations with West Melbourne.

Regarding the interim agreement, Mr. Schluckebier added that officials from West Melbourne believe they are not responsible for the obligations outlined in that agreement. Melbourne believes West Melbourne, not a series of third parties, is exclusively obliged to meet those commitments. The agreement contains a provision that third parties may pay (reservation fees, etc.) but that does not relieve West Melbourne of its obligation. Regarding the bill provided to West Melbourne, Melbourne is not looking to take that to the next level. We've enjoyed a good business relationship with West Melbourne in the past and we hope to continue that in the future. The City Manager stressed that it is beyond anyone's imagination as to why West Melbourne feels they need to go to court.

Mr. LaRusso said that until we understand what this lawsuit is about, his recommendation is that we stop negotiations and stop putting our time, resources and energy into this issue. Additionally, he recommended that all proposals be removed from the table; the issue should start at square one.

Following a brief discussion, Mr. LaRusso agreed to bring this issue up under petitions, remonstrances and communications. Mr. LaRusso concluded by saying it is his intent to protect the citizens of Melbourne and, if need be, the citizens of West Melbourne.

***Financial Guaranty Insurance Corporation (bond insurer for all outstanding Water and Sewer bonds)*** – Council Member Joanne Corby asked if the bonds were issued for

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

infrastructure, maintenance or repair. The City Manager confirmed that all the bonds were issued for projects relating to infrastructure.

7. Public Comments

None.

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

a. Babcock Street Community Redevelopment Agency Advisory Committee

Mayor Goode announced that the chairman of this committee was hospitalized last week and the vice chairman is not available. The committee's report will be rescheduled for the June 24 meeting. Mayor and Council wished Mr. Edmiston a speedy recovery.

b. Building Board of Adjustment and Appeals

Chairman Richard Ott introduced Len Fallen, board member. Mr. Ott reported that this is a good committee whose members have provided approximately 66 years of civic duty. The board meets when called to (hear appeals of decisions and interpretations of the Building Official and to consider variances of technical codes).

Mr. LaRusso asked Mr. Ott how the City can better serve this board. Mr. Ott replied that this board is well organized, and he confirmed that City staff does a good job providing information to this board.

NEW BUSINESS

8. COUNCIL ACTION RE: Contract award for Professional Engineering Services for the Wastewater Collection/Transmission Master Plan Update for the D.B. Lee and Grant Street Water Reclamation Facilities service areas, Project No. 35207, Reiss Environmental, Inc., Winter Park, FL - \$200,000.

City Engineer Jenni Lamb and a representative from Reiss Environmental were available for questions.

Moved by Meehan/Contreras for approval of the Professional Engineering Services Contract with Reiss Environmental, Inc. for the Wastewater Collection/Transmission Master Plan in the amount of \$200,000. Motion carried unanimously.

9. CONSENT AGENDA:

Council Member Joanne Corby removed items "m" through "o."

Moved by Thomas/LaRusso for approval of the consent agenda, items "a" through "l." Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

- a. Task Order No. 12b to the contract for Pineda Causeway eight-inch water main replacement construction services, Project No. 33605, Hazen & Sawyer, P.C., Fort Pierce, FL - \$49,600.
- b. Change Order No. 1 to the contract for Water Distribution Flushing Services, Project No. 35708, Wachs Valves & Hydrant Services, LLC, Lincolnshire, IL - four-month time extension.
- c. Change Order No. 1 to the Service Agreement to locate, inspect, and test valves and hydrants, Project No. 35608, Wachs Valves & Hydrant Services, LLC, Lincolnshire, IL - \$17,500.
- d. Purchase of 853 additional water meters in various sizes, Badger Meter, Inc., Milwaukee, WI - at per unit prices for a total of \$126,850.73.
- e. Approval of a blanket purchase order for replacement EMU sewage pumps for Wastewater Collection, Florida Bearings, Inc., Miami, FL - \$60,000.
- f. Purchase of 62 Dell OptiPlex 740 personal computers for various City departments, Dell Computer Systems, Round Rock, TX - \$750.73/each, total cost of \$46,545.26; and transfer of \$46,546 from Information Technology Capital Outlay to the Computer Equipment account for this purchase.
- g. Contract award to resurface and replace net posts of five tennis courts at Fee Avenue Park, Varsity Courts, Longwood, FL - \$20,074.
- h. Contract award for aqua ammonia for Water Production, Univar USA, Inc., Jacksonville, FL - \$107.83 per drum; estimated annual cost of \$15,527.52.
- i. Approval to rescind the March 11, 2008 contract award to Fountaining, Cocoa, FL for repairs to the Wells Park fountain; new contract award for the repairs to Wells Park Fountain, Ion, Inc., West Melbourne, FL - \$14,750; and transfer of \$3,657 from General Fund Miscellaneous Construction Projects to supplement this project budget.
- j. Agreement between the City of Melbourne and the School Board of Brevard County for six School Resource Officers at six schools for the 2008-2009 school year from August 18, 2008 through June 2, 2009 at a reimbursement of \$28,500 per officer, totaling \$171,000.
- k. Agreement between the City of Melbourne and the School Board of Brevard County for one School Resource Officer at the South Area Adult Community Education Center for the 2008-2009 school year from August 18, 2008 through June 2, 2009 at a 100% reimbursement of salary plus benefits totaling \$58,550.
- l. Approval of \$2,084 from the Law Enforcement Trust Fund to finance travel for three members of the Police Community Relations Council to attend the National

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

Conference on Preventing Crime in the Black Community in Tampa, FL, June 19 - 22, 2008.

- m. Approval of a Hold-Harmless Agreement between the City of Melbourne and Manatee Point, Inc. for Starbucks - Eau Gallie located at 1330 N. Harbor City Boulevard. (See next agenda item for action.)
- n. Resolution No. 2096: A resolution authorizing the City Manager to execute a Fire Protection System Maintenance and Water Utility Agreement between Joy LLC, the City of West Melbourne, and the City of Melbourne for property located at 2975 Eber Boulevard. (See next agenda item for action.)
- o. Resolution No. 3000: A resolution implementing FY 2007-2008 Second Quarter Budget Review recommendations. (See next agenda item for action.)

10. ITEMS REMOVED FROM THE CONSENT AGENDA

- m. Approval of a Hold-Harmless Agreement between the City of Melbourne and Manatee Point, Inc. for Starbucks - Eau Gallie located at 1330 N. Harbor City Boulevard.

Mrs. Corby asked if the sewer line is in current need of replacement. Deputy City Manager Howard Ralls replied no and explained that, in the future if the line needs to be repaired or replaced, this agreement holds the City harmless from the cost. The property owner will assume the responsibility to perform the work.

Moved by Corby/LaRusso to approve item "m." Motion carried unanimously.

- n. Resolution No. 2096: A resolution authorizing the City Manager to execute a Fire Protection System Maintenance and Water Utility Agreement between Joy LLC, the City of West Melbourne, and the City of Melbourne for property located at 2975 Eber Boulevard.

Mrs. Corby said she is leery about jumping into an agreement with West Melbourne. It is her understanding that this parcel will be annexed into West Melbourne; however, it is the owner's desire to have Melbourne water. In return the City will receive an easement for the water line.

Mr. Ralls informed Council that the property is located in Melbourne's service area. The owner came to the City for water. Although the property is currently vacant, the owner intends to build a daycare facility, which will require fire protection and two fire hydrants. Since the property will be annexed into West Melbourne, staff did not want to maintain fire hydrants in another jurisdiction. He noted that the first part of the agreement addresses that issue.

The second issue is that during the process we learned one of our big water lines crosses the property; however, there is no easement in the records. The owner agreed

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

to give the City an easement in exchange for water service. Following a brief discussion, Mr. Ralls said that this owner will be a direct customer of the City of Melbourne located outside of Melbourne; therefore, the water rates will be 10% higher than the inside City rates.

Mrs. Corby said she recently attended a neighborhood meeting with residents in the Trimble Road area wishing to annex. The issue was brought up that many people receive Melbourne water although they are not located in Melbourne. During that meeting, one of the residents asked why they couldn't simply purchase our water without annexing. She stated that this confuses her and she wants to be sure we are not setting a precedent.

Mayor Goode replied that the City has had varying policies over the years. The current policy requires annexation in order to receive Melbourne water. Mrs. Corby stated that it isn't consistent. The Mayor pointed out that our big water line goes through this property; therefore, he will make an exception on this item.

Attorney Gougelman pointed out that this property is not contiguous to the City of Melbourne and, given its location, it probably never will. It is a unique and distinguishable situation.

Mr. LaRusso said it is his understanding that existing non-Melbourne residents who receive our water made that arrangement prior to a change in our Code. Currently, per Code, if you want Melbourne water you must annex. The City Manager agreed and added that a property owner may obtain water through a pre-annexation agreement if their property has a chance of eventually being located in Melbourne.

Moved by Goode/Meehan for approval of item "n."

Council Member Cheryl Palmer asked what year the water line was installed. Mr. Ralls replied about 15 years ago. Mrs. Palmer asked if there are other situations like this where the City does not have an easement.

Attorney Gougelman replied that he guarantees there are other situations like this; however, staff has no idea where they might be. He added that local government has become more sophisticated in dealing with issues like this.

The question was called. Motion carried unanimously.

- o. Resolution No. 3000: A resolution implementing FY 2007-2008 Second Quarter Budget Review recommendations.

Mrs. Corby said that this item contains a lot of recommendations and because of our budget constraints, she would have liked a more in-depth discussion.

Moved by Meehan/Thomas for approval of Resolution No. 3000. Motion carried. Mrs. Corby voted nay.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

11. RESOLUTION NO. 2097: (Public Hearing) A resolution designating 506 Young Street (HD-2008-02) as an historic resource.

Mrs. Dittmer introduced the item. Mayor Goode opened the public hearing. There were no comments from the audience.

Moved by Contreras/LaRusso for approval of Resolution No. 2097. Motion carried unanimously.

12. RESOLUTION NO. 2098: (Public Hearing) A resolution designating 801 East New Haven Avenue (FOC-2008-04) as a Brownfield Designation Area. (Applicant - City of Melbourne)

Mrs. Dittmer reviewed the agenda report. The following is an excerpt:

*The property is the former Pop's Casbah restaurant site located at the southeast corner of East New Haven Avenue and Waverly Place. The site was previously utilized as a gas station and has been identified as a contaminated site.*

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

*The Planning and Zoning Board made a finding of consistency and voted unanimously to recommend approval of this request.*

The public hearing was opened and closed with no comments.

Moved by Meehan/Thomas for approval of Resolution No. 2098.

In response to Mrs. Corby, Mayor Goode confirmed that the gas tanks have been removed from the site. Mrs. Corby asked if the property owner is aware of all the criteria and responsibilities that go with a Brownfield area designation. Mrs. Dittmer replied yes and pointed out that the City will not be involved with the clean-up.

The City Manager commented that the federal and state governments want to make certain that this designation is not being done out of synch with the local government. He added that we will likely have two or three more areas like this around the Airport property. In the case on the agenda, the City is able to work with the business without a financial share.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

The question was called. Motion carried unanimously.

13. ORDINANCE NO. 2008-16 (AR-2008-221) MELBOURNE HILTON BEACHSIDE: (First Reading/Public Hearing) An ordinance providing for annexation of a total of 5.66± acres of property, including one beach access parcel and two parcels that are developed as the Hilton Hotel, located on the east side of North Highway A1A, between Eau Gallie Boulevard and U.S. Highway 192/Fifth Avenue. (Owner - Wilmington Trust Company, Trustee) (Applicant/Representative - City of Melbourne)

Attorney Gougelman read Ordinance No. 2008-16 by title. Mrs. Dittmer briefed Council and located the property on the map.

Mrs. Palmer asked if the City is adequately prepared to provide fire service through our agreement with the County now that we are annexing beachfront property with taller buildings. The City Manager explained that this property will continue to be served by the County station located across the street. It will be protected at the same current level. Additionally, the City will soon be positioning a ladder truck at Station 71 on Eau Gallie Boulevard.

Mrs. Palmer said she understands that it will continue receiving the same service; however, the City will now be responsible. Mr. Schluckebier agreed and added that our responsibility is offered in tandem with our agreement with the County. Additionally, he said that the City Attorney reminded him that these buildings have been constructed to higher standards, and they have sprinkler systems.

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

Moved by LaRusso/Meehan for approval of Ordinance No. 2008-16 based upon the findings contained in the Planning and Economic Development staff memorandum. Motion carried unanimously.

14. ORDINANCE NO. 2008-17 (CPA-2008-02) AND ORDINANCE NO. 2008-18 (Z-2008-1130) GREATER HEIGHTS: Ordinances providing for a Comprehensive Plan Amendment and rezoning for 10 parcels totaling 1.807± acres, located on the north side of Masterson Street, east and west of Kennedy Street. (Owner/Applicant - Brevard Neighborhood Development Coalition) (Representative - Lynn Brockwell-Carey) (P&Z Board - 4/17/08)
- a. Ordinance No. 2008-17/CPA-2008-02: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Low Density Residential to Medium Density Residential on ten parcels totaling 1.807± acres.
  - b. Ordinance No. 2008-18/Z-2008-1130: (First Reading/Public Hearing) An ordinance changing the zoning from R-2 (One-, Two-, and Multiple-Family Residential) to R-2

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

(10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre) on ten parcels totaling 1.807± acres.

Attorney Gougelman read the ordinances by title. Mrs. Dittmer reviewed the agenda report and stated that the Planning and Zoning Board voted unanimously to recommend approval. There were no disclosures by Council, and Mayor Goode opened the public hearing.

Lynn Brockwell-Carey, Executive Director, Brevard Neighborhood Development Coalition, stated that BNDC is a faith based, non-profit organization that has been working with the Booker T. Washington neighborhood in partnership with the resident association, Habitat for Humanity and the City of Melbourne. Their goal is to increase the number of affordable housing units. Under the current Code, they would only be able to provide 10 units on this property. If approved this change would increase that number to 18, which seems like a good balance. It provides as much affordable housing as possible while respecting the aim of the Comprehensive Plan.

Ms. Brockwell-Carey elaborated on the arduous process of obtaining title to this property. She pointed out that Habitat for Humanity is building units next to this property and during neighborhood meetings, the community named this area “Greater Heights.”

With regard to the building plan, Ms. Brockwell-Carey explained that they have been working with the Police Department on crime prevention through environmental design. She pointed out that the agenda materials contain a petition signed by residents in favor of the project. She noted that during a neighborhood meeting, the residents expressed concern about this property returning to its previous condition. She concluded by distributing a question/answer sheet about the project.

Mrs. Palmer asked about management of the site and on-site security. Ms. Brockwell-Carey said that BNDC will be the owner. They have committed to 15 years of ownership and maintenance on the property and will likely contract with another non-profit organization that has more experience in management. The property will have a resident manager on site. Additionally, her office is located directly across the street.

Several Council Members commended Ms. Brockwell-Carey for the work BNDC has done in this area with the community leaders.

The Mayor closed public hearing.

Moved by Contreras/Palmer for approval of Ordinance No. 2008-17 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2008-18 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

15. ORDINANCE NO. 2008-19 (LDR-2008-03/FOC-2008-03) CONCURRENCY: (First Reading/Public Hearing) An ordinance amending Appendix D of the City Code entitled, "Land Development," by amending Section 3.02, definitions; and Section 3.06, concurrency review. (Applicant - City of Melbourne) (P&Z Board - 4/17/08)

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

*In October 2006, Council approved the payment of capacity reservation fees to reserve infrastructure capacity. During the past year and a half of implementation of the fee, staff has determined the need for several changes to the Code. In particular, due to the lengthy lead-time for approval of formal site plans and the requirement for other regulating agency approvals, staff is proposing adding six months to the time frame. The following changes are proposed:*

*Formal site plan approvals will receive an 18-month reservation of capacity upon payment of the 10% capacity reservation fee (one year currently) and an allowance for an additional 18-month capacity reservation upon payment of a 15% capacity reservation extension fee (one year currently).*

*Preliminary subdivision plats will continue to receive a three-year reservation of capacity upon payment of the 10% capacity reservation fee and final subdivision plats would receive an additional two-year reservation of capacity upon payment of the 15% capacity reservation extension fee (one year currently).*

*A new category of plan approval will be created to address site plan approvals that do not meet the thresholds for a formal site plan and are reviewed and approved by City staff. These plans will receive the current one-year capacity reservation with the allowance for one additional year to be granted upon the payment of the extension fee.*

*A new category is also created for development projects outside of the City's jurisdiction. (During her review, Mrs. Dittmer noted that City Attorney has proposed a change to this section.) These projects typically receive concurrency approval for water. Due to differences in development approval processes and time frames with other governmental entities, this category will pay higher capacity reservation fees and the approval period will be based upon the issuance date of the certificate of concurrency by the City of Melbourne. The initial capacity reservation fee will be 25% and the extension fee will be 25%.*

*The Planning and Zoning Board voted unanimously to recommend approval.*

Attorney Gougelman reported that he and the City Manager took another look at the new category for development projects located outside of the City's jurisdiction. They contacted the City's special water counsel, Tom Cloud, who has an extensive background in rate-making. He concurred with the view that there is liable to be a problem with having a higher capacity reservation fee for projects located outside the

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

City. The fee should be the same whether a property is located inside or outside the City. Attorney Gougelman read several changes that will be required in the ordinance.

Mrs. Palmer asked that this item be returned with the proposed changes if there is no time constraint. Mayor Goode stated that, without objection, the item will be postponed until the May 27 Council meeting.

16. ORDINANCE NO. 2008-20 FIRE PREVENTION AND PROTECTION: (First Reading) An ordinance amending Chapter 12 of the City Code, entitled “Fire Prevention and Protection,” by eliminating an obsolete fee and clarifying that a “license” is a “business tax receipt.”

The City Attorney read Ordinance No. 2008-20 by title.

Mrs. Palmer asked if a new fee is being proposed. City Clerk Cathy Wysor replied that the necessary fee category already exists. This ordinance provides for the repeal of an obsolete fee.

Moved by LaRusso/Contreras for approval of Ordinance No. 2008-20. Motion carried unanimously.

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

17. COUNCIL ACTION RE: Approval of \$1,648 to the Brevard Art Museum to provide funding for changes to the Florida Department of Transportation signage on I-95 and SR 518.

Moved by LaRusso/Meehan for approval of \$1,648 in Eau Gallie CRA funding assistance to the Brevard Art Museum. Motion carried unanimously.

Without objection, Council reconvened for the remaining agenda items.

18. RESOLUTION NO. 2099: A resolution providing for the appointment of 11 members to the Affordable Housing Advisory Committee.

**Citizen actively engaged in residential home building industry:**

Mrs. Meehan nominated Harry Williams. Moved by Contreras/Goode to close the nominations. Motion carried unanimously. Mayor Goode stated that, without objection, Mr. Williams is appointed.

**Citizen actively engaged in banking or mortgage banking industry:**

Mrs. Meehan nominated Debra Hussey. Moved by LaRusso/Contreras to close the nominations. Motion carried unanimously. Moved by LaRusso/Contreras to appoint Debra Hussey. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

**Citizen representative of areas of labor actively engaged in home building (roofer, plumber, carpenter, etc):**

Moved by Meehan/Palmer to appoint Marcella Mika. Motion carried unanimously.

**Citizen actively engaged as an advocate for low-income persons:**

Mr. Thomas nominated Maryjane Wysocki. Moved by Contreras/LaRusso to close the nominations. Motion carried unanimously. Moved by Contreras/LaRusso to appoint Maryjane Wysocki. Motion carried unanimously.

**Citizen actively engaged as a for profit provider of affordable housing:**

Moved by Contreras/LaRusso to appoint Fred Malik. Motion carried unanimously.

**Citizen actively engaged as a not for profit provider of affordable housing:**

Moved by Meehan/LaRusso to appoint Joe Gassman. Motion carried unanimously.

**Citizen actively engaged as real estate professional:**

Moved by Palmer/LaRusso to appoint Lorraine Fadden. Motion carried unanimously.

**Member of the Planning and Zoning Board:**

Mr. LaRusso nominated Mrs. Chambers. Moved by Palmer/Contreras to close the nominations. Motion carried unanimously. Moved by Contreras/LaRusso to appoint Kathy Chambers. Motion carried unanimously.

**One resident of Melbourne:**

Mrs. Palmer nominated Catherine Halverson, and Mr. Thomas nominated John Barnett. Moved by Contreras/LaRusso to close the nominations. Motion carried unanimously. The roll call vote on the nominees was:

Halverson: Contreras, LaRusso, and Palmer

Barnett: Thomas, Corby, Meehan and Goode

Appointed: John Barnett

**Citizen who represents employers within Melbourne:**

Mrs. Meehan nominated Sandra Racicot, and Mr. LaRusso nominated Michael Schaaf. There were only two applicants for this position; therefore, the nominations were closed. The roll call vote on the nominees was:

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

Racicot: Contreras, Palmer, Meehan and Goode

Schaaf: LaRusso, Thomas, and Corby

Appointed: Sandra Racicot

**Citizen who represents essential services personnel (any person employed by educational, governmental and human service agencies; health care personnel; public safety personnel; and any skilled building trades personnel and food service personnel):**

Mr. LaRusso nominated Michael Schaaf, and Mrs. Palmer nominated Ellen Heuser. Moved by LaRusso/Contreras to close the nominations. Motion carried unanimously.

The roll call vote for the nominees was:

Schaaf: Contreras, LaRusso, Corby and Goode

Heuser: Thomas, Palmer, and Meehan

Appointed: Michael Schaaf

Moved by LaRusso/Contreras for approval of Resolution No. 2099 with an amendment to include the names of the members appointed by Council. Motion carried unanimously.

Recessed: 8:00 p.m.

Reconvened: 8:07 p.m.

19. COUNCIL DISCUSSION RE: Review of City Council policies.

Council reviewed the following policies:

2. **The roll call will be by district with two exceptions - the Mayor will vote last as provided by Code and the Vice-Mayor will vote next to last. (2/6/1979)**

There were no changes to this policy.

3. **Any ordinance or resolution should have approval, in concept, of the majority of the Council prior to sending it to the staff for preparation; however, this does not preclude any Council Member from preparing his/her own and submitting it to staff. (12/8/1981)**

Mrs. Palmer said she would like to propose a new policy that would provide for the following: When an ordinance is proposed, Council will be provided with information on who generated the idea and the justification. Council will determine whether to proceed. If

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

Council approves the idea, staff will prepare a draft for Council's perusal and comments. The ordinance will then be placed in final form with review by the City Attorney.

Mrs. Palmer added that she's not happy when ordinances appear on the agenda out of the blue.

Moved by Palmer/LaRusso to strike Policy #3 in favor of a new policy. Following discussion, the maker/second agreed that staff will draft the language for the new policy and the City Attorney and City Manager will review it before being voted on by Council. Motion carried. Mayor Goode voted nay.

4. **Resolution No. 731 – The property located on the east side of U. S. 1, between the former Syracuse Avenue right-of-way and Laurie Street, is declared as a scenic corridor. The City shall acquire the land through donation, perpetual easements, purchase or other appropriate means as may be determined by the Council. (2/9/1982; reaffirmed 8/11/1998)**

There were no changes to this policy.

5. **Council Members will be seated by district at the Council table. (2/28/1984)**

There were no changes to this policy.

7. **Council approved a cap of (up to) \$500 for the Mayor for emergency trips. Council will confirm at the next scheduled Council meeting. (1/10/1989)**

Council Member Thomas suggested that the Mayor "or his designee" be authorized for emergency trips. Moved by Thomas/Contreras to revise this policy by adding language "or his designee." Mr. Thomas confirmed that his intent is for the designee to be a Council Member. The question was called. Motion carried unanimously.

The policy was revised to read as follows:

Council approved a cap of (up to) \$500 for the Mayor or a Council Member acting as his designee for emergency trips. Council will confirm at the next scheduled Council meeting. (1/10/1989; revised 5/13/2008)

In response to Mrs. Corby, Mrs. Wysor confirmed that when this process is over, staff will return with a resolution providing for the adoption of Council's "rules of procedure." This resolution would complement Section 2-24 of the City Code.

20. **COUNCIL DISCUSSION RE: Changes to the recreational equipment/vehicle regulations.**

Mrs. Dittmer reviewed the agenda report. The following is an excerpt:

*At the April 8 City Council meeting, an ordinance relating to changes in recreational equipment/vehicle parking, failed to be approved. Due to previous interpretations of the*

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

*City Code by the Planning Director, and appeals upheld by the Zoning Board of Adjustment (ZBA), there is a need to clarify the current Code language through an amendment to the Code. The two issues that have been challenged are the definition of the front building line language and the inclusion of some recreational equipment within the current Code definition.*

*The proposed ordinance clarifies these two issues, but does not tighten the regulations. In fact, the proposed ordinance slightly relaxes the regulations for corner lots. In addition, the proposed changes are intended to assist Code Enforcement personnel with the enforcement of the Code. The following are the proposed changes within the ordinance:*

- 1. Amending the definition of major recreational equipment to include several categories of equipment that had been previously interpreted as included, such as golf carts, off-road vehicles, and trailers for recreational equipment. For a number of years, staff has included these items within this definition, and they have been regulated by the parking allowances.*
- 2. Adding new language to define a timeframe for loading/unloading of recreational equipment/vehicles. This change is to assist enforcement so that homeowners are not permitted to "load/unload" these vehicles seven days a week.*
- 3. Adding new language to prohibit the parking of recreational equipment/vehicles within the public right-of-way. Currently, any vehicle in the right-of-way is required to be handled by the Melbourne Police Department, thus not allowing enforcement through Code Compliance.*
- 4. Clarifying the definition of the front building line that determines the allowable location to park recreational equipment/vehicles. The current definition is very clear for typical rectangular lots; however, some lots are irregular in shape or have homes built on angles that do not parallel the right-of-way. The proposed language simply further clarifies that the building line follows the edge of the home and then runs parallel to the right-of-way until it intersects the side property lines. This clarification follows the method staff has utilized to interpret this section of the Code for a number of years, and upholds the appeal to this section by the ZBA. Furthermore, it does not decrease the current allowable area to park recreational equipment/vehicles.*
- 5. Adding new language to increase the allowable area to park recreational equipment/vehicles. The proposed change would allow equipment to be parked on the lot if they are screened by a six-foot opaque fence and are not visible. For example, a fence can be on the property line on a side corner yard, but currently recreational equipment/vehicles cannot be parked there unless they meet the minimum building setback line for side corner yards. This change would increase the allowable area to park recreational equipment/vehicles if entirely screened by an opaque fence.*

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

6. *Adding new language to increase the allowable area to park recreational equipment/vehicles for corner lots abutting arterial or collector roadways over 100 feet in width. Currently, recreational equipment/vehicles are not allowed to be parked within a side corner yard, regardless of the size of the adjacent roadway or the existence of a fence. Major roadways typically have four lanes and access to the side corner yard is typically not allowed. This proposed allowance would permit the recreational equipment/vehicles to be visible over the six-foot fence since it would not abut other residential lots and would provide additional area for the parking of recreational equipment/vehicles.*

*City staff requests additional input from City Council regarding the proposed changes and whether they are suitable for the City, too stringent or too lenient. At a minimum, a Code amendment needs to occur to clarify the determination of the building line (#4) and to include additional categories for recreational equipment (#1). Proposals #2 and #3 were intended to assist with consistent enforcement of the current language. Proposals #5 and #6 were proposed to provide additional area for the parking of recreational equipment/vehicles.*

*Any proposed changes to the original ordinance may be modified and returned to City Council as directed.*

Mrs. Palmer referenced the expansion of the definition of recreational equipment and asked if this means a person would not be able to park, for example, their trailer with jet skis under their carport. Mrs. Dittmer replied no and said a person would be able to park under their carport. The current language in the Code provides exclusions, including garage, carport, and rear of the building line. Mrs. Palmer asked if the side lot would need to be paved if used for parking equipment and Mrs. Dittmer replied no.

Mrs. Palmer expressed concern with limiting the time a person may load/unload their equipment. She added that if one or two people in the City are causing problems, it shouldn't affect everyone else. The Code should not be made more stringent.

Mrs. Dittmer displayed drawings showing where the Code currently allows equipment to be parked and, if amended, the expanded area where equipment could be parked.

Mrs. Palmer referenced #5 and noted that equipment over six feet would be prohibited in the expanded area. She pointed out that there are very few recreational vehicles under six feet.

A brief discussion followed regarding #6, which would allow the equipment to extend higher than the six-foot fence if lots abut an arterial or collector roadway. Regarding #5 and #6 Mrs. Dittmer explained that the revisions do not eliminate areas. They expand the area where equipment may be parked. In one example, people would gain area if they have equipment less than six feet. And, in the other example they could park equipment even if visible over the six-foot fence.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

Mrs. Palmer said she is confused by the proposal, which means people with recreational equipment will be confused.

Mrs. Corby said that it seems like the regulations pit neighbor against neighbor; there are too many rules to follow. If someone wants to park equipment on their property, they should be able to. She added that in one example to gain additional area, a person would be forced to install a six-foot fence. Regarding #6, she pointed out that the majority of homes are located in neighborhoods and not on arterial roads.

Discussion followed about the amount of time equipment may be parked in the driveway for loading and unloading. Mrs. Corby asked about guests who park and stay for the weekend. Mrs. Dittmer replied that the Code does not permit that today.

Mr. LaRusso said that Council should consider a free temporary use permit. In his community, residents may obtain a three- to seven-day permit if family or friends with RVs are coming for a visit. Additionally, he stated that #5 is too restrictive. There is no recreational equipment that's less than six feet. He recommended that the equipment be allowed another six feet above the fence line.

Mrs. Palmer asked if the City is receiving a lot of complaints about RVs or if this is coming from Council's decision to have Code Enforcement visit every neighborhood on a periodic basis.

Mrs. Dittmer replied that she believes complaints about RVs started before that change in process. Complaints from neighbors resulted in interpretations of Code being sent to the Zoning Board of Adjustment.

Mrs. Palmer recalled that when she drove through the City several years ago, she noticed in every community people were parking every size boat in their driveway. Most had no idea this was a Code violation and their neighbors had no idea. She recommended that staff look at where the complaints are coming from. If a neighbor is doing something that is infringing on the enjoyment of another neighbor's property, we need to take care of that. However, we do not need to restrict peoples' use of their property and equipment. The Code needs to be more liberal for people who are not causing problems.

Mrs. Corby added that some people may have had to remove their boat from a marina; therefore, she would like to be as lenient as possible.

Mrs. Dittmer said if it's the intent to be more lenient, the ordinance does exactly that. She added that staff can go further if Council wishes.

Mayor Goode asked Council to comment on areas where the ordinance needs to be amended.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

Mr. Contreras said he is hearing that we need to be more lenient. The height limitation should be addressed (equipment may not be visible above the six-foot fence) and staff should determine what clarifications Code Enforcement is seeking.

Mrs. Palmer said she appreciates Mr. LaRusso's suggestion to allow equipment to be visible six feet above the six-foot fence. She asked staff to return with a draft – rather than a final – ordinance.

Mr. Thomas said he likes the alterations suggested by Mr. LaRusso. Mayor Goode pointed out that Mr. LaRusso lives in a beautiful gated community with deed restrictions. People who purchased in that community were aware of and agreed to the regulations. The rest of Melbourne does not have those kind of restrictions.

Mr. LaRusso agreed that he chose to live in a community with restrictions; however, he doesn't feel those should be imposed on the rest of the City. He repeated that he would like to see a way for an RV to remain in the driveway for a certain number of days when someone is visiting.

Mayor Goode pointed out that staff has its guidance on this issue. He asked that a draft ordinance be returned.

Mrs. Palmer asked if an RV that is used by a person as their main mode of transportation is subject to these regulations. Mrs. Dittmer replied that when this item returns, she will provide clarification on that issue from Code Enforcement.

21. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Council Member Contreras said that with the price of gasoline escalating, more and more people are using the bus. He asked if staff would return with information on bus benches and covers. During a brief discussion, Council discussed allowing private and corporate sponsorship of benches, an adopt-a-bench program, uniform design, having the Architectural Review Board develop aesthetic guidelines, etc. The City Manager confirmed that he will provide information.

Council Member Joanne Corby said she received a report that eight police officers recently left the City's employment. The City Manager said he believes four or five left in the past three months to work for other agencies. He confirmed for Mrs. Corby that exit interviews are conducted. Mrs. Corby asked for the number of officers that have left and information from the exit interviews on why the officers left.

*Melbourne/West Melbourne Water Negotiations* – Mr. LaRusso referenced the direction he was going in under the City Manager's report and said he would like to make a slight change of course. The City of Melbourne has continuously and professionally negotiated in good faith, and he would like for staff to meet one more time with a representative from West Melbourne. The City has not heard from West Melbourne directly that they do not want to meet any more. If that is where they want to be, he would like for that information to be provided in writing and returned to City Council. If that is their position after we try

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

one more time, then we need to move to the next level as suggested earlier. Mr. LaRusso concluded by saying that because there is a threatened lawsuit, he would recommend that Melbourne be the “bigger person” and move forward with an attempt at one more meeting.

Mayor Goode disagreed.

Mr. LaRusso asked the City Manager if he would contact Mr. Reynal and ask whether West Melbourne intends to sue. He suggested that there also be no more communication from Council Members. He pointed out that a member from West Melbourne worked with Council Member Thomas on a communication and then several days later voted to sue us.

Mr. Thomas stated that Council and staff have acted very professionally. Melbourne has acted in a manner to not only safeguard water for West Melbourne, but to take care of our citizens and the communities that are dependent on our water system. Melbourne has had to look out for the bigger picture and our staff has done its level best to do what’s right by everybody. Melbourne staff has put together two proposals, which West Melbourne never responded to; that is extremely disappointing in the negotiation process. And, West Melbourne’s threat to litigate is very unfortunate for them and it’s a disservice to their residents.

The lawsuit process was mentioned. Attorney Gougelman explained that West Melbourne can file a lawsuit but before it can go forward, both parties will be forced into dispute resolution mediation. Some elected officials view that as negotiating with a gun to your head; it presents a bad foundation for negotiations.

Mr. LaRusso pointed out that our interim agreement states that we have to meet once a month, or else there is a breach of contract. That’s why he has proposed an attempt at one more meeting. One member from each staff should meet and West Melbourne should state its intent. Mr. LaRusso again recommended that Council Members make no comments. He added that although they believe they are doing the right thing, he believes they are being mismanaged.

Mayor Goode asked Council to keep in mind that the City is responsible for about \$120 million in debt for the water system. If every community we serve says they don’t want to buy water from us tomorrow, we are still the ones that owe the \$120 million.

Mr. LaRusso said that as a business we have to realize when a customer drains our resources and time and becomes unprofitable, it’s time to fire that customer.

Mr. Thomas said that we have done everything we can do and we’ve acted in good faith. It’s time to go about our business. If West Melbourne wants to take us to court, then let them. We’ll do what we’re supposed to do, and we should let the chips fall.

A brief discussion continued.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

Mr. Contreras said that he believes we have come to an impasse. Time is money and it's an issue to the taxpayers. The olive branch has been out there on multiple occasions. Melbourne has put proposals out there without a response. And, there's the issue relative to the bill that was sent, which remains unpaid. The taxpayers of Melbourne are holding the note and he does not want to see our system bled out. He concluded by saying, "We're done."

Mr. LaRusso said he's asking for one more shot because it's in the contract. The last effort can be in the form of a phone call or a meeting at the Waffle House. He'd like to know that at the end, per the interim agreement, Melbourne is clean. At that point, we move forward with this issue.

Mrs. Meehan asked if the threat of lawsuit negates the interim agreement. Attorney Gougelman said the only communication we've had is an article in the newspaper. Melbourne hasn't officially received anything from West Melbourne.

Attorney Gougelman said that he and the City Manager get the drift of where everybody is going. He believes it's time for Dr. Schluckebier and Mr. Reynal to have a meeting and report back to Council. Council can consider where to go from there.

Moved by LaRusso/Thomas that the City Manager meet with West Melbourne's City Manager within a 30-day period of May 14 to see if they can come to some kind of resolution and report back to Council.

In response to Mrs. Palmer, Mr. Schluckebier described what typically takes place at the monthly negotiating meetings. Mrs. Palmer asked if there have been small gains in these meetings where both parties have found areas of agreement. Mr. Schluckebier replied yes.

Mrs. Palmer said that until West Melbourne actually files a lawsuit, she would like to see us continue to keep up our end by having a once a month meeting. If we do walk into court at some point, she'd like for Melbourne to say that we took the high ground, even in the face of being challenged and threatened with lawsuits.

Discussion continued.

The maker/seconder amended the motion to provide that the purpose of the meeting is to determine whether West Melbourne is going to sue us or not. And, if West Melbourne is not, to determine if we are going to go forward in good faith and continue negotiating.

The question was called on the motion and the amendment. The roll call vote was:

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

Nay: Corby and Goode

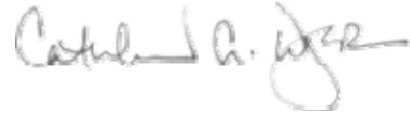
Motion carried.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MAY 13, 2008

22. ADJOURNMENT

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

The meeting adjourned at 9:40 p.m.



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City Clerk – 5/20/2008

Approved by Council: \_\_\_\_\_