

CITY OF MELBOURNE, FLORIDA  
MINUTES – SPECIAL MEETING BEFORE CITY COUNCIL  
JULY 9, 2008



A special meeting of the City Council was held in the Council Chamber, 900 East Strawbridge Avenue, and was called to order at 6:30 p.m. by Mayor Harry C. Goode, Jr.

1. Pledge of Allegiance.
2. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Kathy Meehan	Vice Mayor, District 3
	Richard Contreras	Council Member, District 1 (arrived 6:45 p.m.)
	Mark LaRusso	Council Member, District 2
	John Thomas	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Joanne Corby	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Deputy City Manager
	Howard Ralls	Deputy City Manager

3. Presentation to Council: A briefing provided by GAI Consultants, as well as City staff and outside counsel, concerning West Melbourne and water services issues.

City Manager Jack Schluckebier introduced Tom Cloud, the City's special counsel who has been assisting the City with reviewing negotiations, proposals and ideas with West Melbourne. Additionally, the City of Melbourne engaged an outside engineering review by GAI Consultants. Mr. Schluckebier informed Council that following an overview by Tom Cloud and representatives from GAI, staff will provide a brief on concurrency issues and our current objection filed with the Department of Community Affairs relative to West Melbourne's proposed Comprehensive Plan amendment.

Tom Cloud, Gray Robinson, Attorneys at Law, Orlando, introduced Gerry Hartman, GAI Consultants. Mr. Cloud stated that Mr. Hartman has been an engineer in Florida in the water and sewer arena for 32-plus years. He discussed Mr. Hartman's engineering background and professional experience. Mr. Cloud added that Mr. Hartman is an appraiser of utility systems, and there is only a handful with this expertise in the country. GAI Consultants was involved in the analysis of the West Melbourne offer.

Mr. Cloud outlined the history of the water contract and the process of negotiations with West Melbourne:

- 1/29/1968 – Exclusive “all requirements” water agreement between the Town of Eau Gallie and West Melbourne. An assumption of that agreement was undertaken by Melbourne in 1970.

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- 5/7/1970 – First agreement Melbourne was a party to following the merger of Eau Gallie and Melbourne.
- 7/11/1978 – The originating document. The contract is an exclusive buy and exclusive sell between the two communities. At that time, West Melbourne was basically one neighborhood and Melbourne was supplying all of the water to the cities in South Brevard County.
- 11/3/1986 – The “Corasci” amendment was negotiated. The Corasci property, which was located in Melbourne’s service area, did not have City waterlines adjacent to it. The South Brevard Water Authority designated Melbourne’s service area in 1983. West Melbourne had adjacent lines and an agreement was entered into to enable West Melbourne to provide service. Certain terms and conditions were put into that agreement, including West Melbourne’s recognition of the City’s retail service area based on the South Brevard Water Authority’s declaration.
- 2/4/1997 – A second amendment was negotiated in the water agreement for the City to begin to collect capital charges or impact fees. Up until 1997, Melbourne did not collect a single impact fee from West Melbourne for the provision of water. That agreement provided that the cities would implement measures to carry out the agreement. Within a month or two, the current concurrency system was implemented by West Melbourne in response to this amendment. This amendment also contains a provision that Melbourne agreed to the extension of the contract based on a commitment to renegotiate the terms of the entire agreement by 1999 – which didn’t happen.
- 6/1/2006 – The “Hessee” dispute over service rights began. Mr. Hessee had signed two contracts with Melbourne. At the same time, West Melbourne expressed a concern that they needed to get additional water supplies in a portion of their city. Melbourne entered negotiations around the same time for an interim agreement to supply that water.
- 8/8/2006 – Melbourne passed a resolution for an interlocal service boundary dispute resolution with Brevard County and West Melbourne to try and divide annexation and service areas west of I-95.
- 10/22/2006 – The City Attorney produced a 60-plus-page draft document of a reconstituted water agreement, which was summarily rejected by West Melbourne after 30 days.
- 1/3/2007 – Negotiations began on the interim water agreement. Negotiations were finished in three months and water was provided to a number of projects. In return, West Melbourne agreed to “immediately begin construction of a waterline on Hollywood Boulevard.” As a note, construction has not yet begun. This

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agreement was entered into despite the fact that West Melbourne was proceeding with annexation of the Hessee property.

- 7/25/2007 – West Melbourne annexed Hessee and that resulted in a joint public meeting between the two cities in Indialantic. Both cities came close to working out an agreement on Hessee at that meeting. A couple of weeks after the meeting, West Melbourne special counsel sent a letter, without copying Melbourne, to the Florida Department of Environmental Protection asking to stop the practice of going to FDEP to obtain a sign-off on water permits. This is a practice that took place over a 30-year period of time. The practice was stopped abruptly and Melbourne was summarily notified. That process was part of a check and balance that allowed Melbourne to check when water was being consumed off its contract.
- 11/7/2007 – The first amendment to the interim agreement was reached to facilitate corrections that needed to take place in the field.
- 12/4/2007 – Approval of settlement over the Hessee issue.
- 1/1/2008 – Melbourne began to negotiate changes in the 1978 agreement.
- 3/4/2008 – Melbourne was given an “exit proposal” from West Melbourne.

Mr. Cloud reported that at this point the negotiations reached an impasse. He noted that he believes Council will understand why when Mr. Hartman reviews West Melbourne’s exit proposal. He added that on May 3, 2008 at a Saturday workshop meeting, West Melbourne voted to sue Melbourne. Melbourne still does not know why. A meeting between the two cities took place approximately two weeks ago and another meeting is scheduled for next week.

Mr. Cloud summarized by saying he is not recommending a lawsuit. He added that he believes he and Mr. Hartman are here to educate everyone about the proposal Melbourne received when the negotiations broke down.

Council Member Joanne Corby asked Mr. Cloud to repeat what occurred from February 1997 when the second amendment to the water agreement was negotiated.

Mr. Cloud informed Council that up until the 1997 amendment, Melbourne had not been charging impact fees or capital charges to West Melbourne. The agreement provided a means and procedure to implement that fee on growth in West Melbourne. Developers were paying an impact fee to West Melbourne, but not to Melbourne. The initial figure was 55% of the level of impact fees charged to Melbourne developers. It has since been increased to 80%; however, one of the recommendations that will be made at this meeting will be to take that to 100%. That recommendation is based on the rate study, which indicates that the charge needs to be at the 100% level.

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Continuing, he said that the agreement provided that Melbourne waived its right to get out of the contract based upon the condition that a comprehensive revision of the agreement would be approved prior to July 1, 1999. Other changes in the contract led to the implementation of concurrency, which is currently a joint concurrency system. Joint concurrency is the second aspect of Melbourne's ability to have a check on how much water is being consumed out of its water system. Mr. Cloud pointed out that this is the same concurrency system that West Melbourne is seeking to change in their proposed Comprehensive Plan amendment.

Council Member Richard Contreras arrived at 6:45 p.m.

Gerry Hartman, GAI Consultants, introduced Tara Hollis, who has been working with him for over a decade. He discussed Ms. Hollis's background, education and experience.

Mr. Hartman briefed Council on West Melbourne's March 4 proposal (West Melbourne's proposals highlighted in bold with Mr. Harman's comments following):

**West Melbourne is asking to be released from its exclusive purchase requirement from Melbourne for no consideration after 2015.** Exclusivity and the control of the customer base in a monopoly type utility are probably the most valuable terms and conditions in an agreement. When an entity that purchases water has the ability to obtain water from some other supplier, it typically pays at least 125% of the in-city rate. A customer located outside the city limits should not be treated the same as a customer inside the city limits. There is no surcharge provided for in the proposal.

The exclusivity provision is in place for many reasons: 1) The economy of scale. Melbourne will lose stranded costs until the capacity that is let go is replaced. That equates to millions and millions of dollars. 2) Efficiency. The same number of operators is at the plant whether it's producing 12 million gallons per day or 16 million gallons per day. The City doesn't change its labor force and that results in cost effective service for the City and its customers. Mr. Hartman stressed that West Melbourne customers receive the full benefit as if they are Melbourne customers.

**West Melbourne is asking to purchase another 1.5 MGD of water capacity without having to pay capital charges, and with no real termination date for usage.** The City's bond covenants provide that there will be "no free service." Mr. Hartman stated that as the City's professional consultant/professional engineer, he is informing the City that under Section 471, Florida Statutes, this would be a breach of the proper conduct of the utility system. Melbourne could not accept that kind of provision. It's fiscally imprudent, improper and just something that you don't do.

**West Melbourne would like additional flow without payment of base charges for the extra flow.** The same premise applies. Melbourne has signed a bond indenture and there is something called "no discrimination between customers."

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**West Melbourne would like to receive a bulk discount of 15% of the guaranteed flows.** This provision would be fine if West Melbourne had adequate facilities. Their own hydraulic analyses show that West Melbourne does not have the storage, peak dampening, re-pumping capability or looping capability for such a wholesale discount. Therefore, it is totally inappropriate. West Melbourne is creating the full cost of service – the full cost of Melbourne’s storage, transmission system and complete peaking factor. West Melbourne has a higher peaking factor than Melbourne’s system. The Melbourne system doesn’t peak, from a technical standpoint, at the same peaking factor that West Melbourne presently peaks at. Melbourne is subsidizing that peaking aspect through its system.

Mrs. Palmer asked Mr. Hartman to explain peaking factor. Mr. Hartman used hypothetical numbers and explained that if Melbourne has a maximum average daily flow ratio of 1.35, we might use 10 MGD with a maximum of 13.5 MGD. In contrast, West Melbourne may use 1 MGD, but their peaking factor is 1.95; therefore, their maximum day is 1.95 MGD. That’s the small part. The worst part is fire flow and hourly and minute type peaking. West Melbourne uses pressure off our system to pressurize their system. This increases the peaking factor on electric usage of Melbourne’s pumps and motors to provide pressure to their system. Melbourne and its customers are paying that peaking charge or factor, not West Melbourne. Mr. Hartman emphasized that all of the peaking aspects are quite significant. The larger the system, the lower the peaking factor. The smaller the system, the higher the peaking factor. And, even more so with regard to fire flow.

**No time limit or commitment date by when West Melbourne has to complete its own water system or buy from Palm Bay in its proposal.** Mr. Hartman commented that the agreement should contain a timeframe.

**After the new West Melbourne system comes on line, West Melbourne is paid back its impact fees from Melbourne.** West Melbourne is asking for a refund of capacity charges. First, the capacity charges have been under-recovered and second, capacity charges weren’t even charged until 1997.

**West Melbourne would like Melbourne to transfer all infrastructure west of I-95.** This needs clarification because the City’s water treatment plant is located west of I-95. There are many assets located west of I-95 and under Chapter 180.301, Florida Statutes, Melbourne is not allowed to transfer assets without a proper purchase and sale for transfer hearing. This is a totally improper request.

**West Melbourne gets all the retail service area west of I-95.** This is an interesting provision because that service area is shown in Melbourne’s bonds as surety for future bond payments.

Continuing, Mr. Hartman said that originally West Melbourne constituted less than 1% of Melbourne’s customer base. For 30 years, Melbourne has provided high quality service and met all the needs. Now, West Melbourne comprises 10% of our customer base. In

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the future, based on their proposals, they would be 20% of the customer base. Melbourne must be careful because the numbers are a lot larger than they used to be. Being nice is one thing, but subsidizing customers at our own citizens' expense is something else.

Mayor Goode asked if City of Melbourne customers today are paying more or less per gallon than a citizen in West Melbourne. Mr. Hartman replied that based on total service – the base facility charges and the gallonage charges – they are paying 25% more than West Melbourne.

Mr. Hartman pointed out the following:

- In order to facilitate annexation and grow its retail system at the expense of Melbourne, West Melbourne wants all the service area west of I-95.
- West Melbourne wants to more than double its flows in the next seven years. This is a tremendous growth rate and at a much higher rate than Melbourne's.
- Melbourne customers are subsidizing West Melbourne customers by approximately 25%, and West Melbourne is now asking for another 15% subsidy. If there are no changes, the subsidy will increase as West Melbourne grows.
- West Melbourne has failed to construct an adequate sequential system. A sequential system is supposed to have peak dampening capacity – not source provision capacity. It is also supposed to be looped. West Melbourne's system does not meet the manual practice for pipeline construction and sequential systems issued by the American Waterworks Association. West Melbourne is depending 100% on oversized master meters.

Mr. Hartman commented that this is no one's fault. These are things that accrued over time and Melbourne has decided to audit the situation, technically and financially, to ensure that everyone is paying their fair share.

Mrs. Corby asked Mr. Hartman to expand his discussion on a looped water system. Mr. Hartman explained that in a looped system, water mains are run around the service area. If there is a problem in one area, water can come from another direction. West Melbourne has inadequate sized lines to provide adequate looping. That means water comes from the master meter straight down and goes to all the different areas without dampening. If there is a big need for fire protection, water comes from primarily one direction instead of two.

This system does not hurt West Melbourne that much because of actions taken by Melbourne. Melbourne pressurizes the system really well and is compensating for West Melbourne. A water system is supposed to protect the public health, safety and welfare and Melbourne's professional staff has a duty to protect the customers.

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Mayor Goode referenced the City's current bond covenants. Mr. Hartman remarked that the City will have a document, fortunately or unfortunately from GAI Consultants, that shows there is a subsidy being given. The rating review firm will ask the City to correct that. Mr. Contreras asked Mr. Hartman to elaborate. Mr. Hartman responded that the City will be asked to provide an appropriate base facility charge to West Melbourne and appropriately size the meters. Right now, the West Melbourne meters are grossly oversized. The current flow is outside the registration of the meters.

Discussion continued regarding the City's bond covenants. In response to Council Member Mark LaRusso, Mr. Hartman said on a coverage test, the rating firm could require us to raise rates; however, Melbourne is not in that position. This really relates to the covenants to the bonds rather than financial ratios. It's more about fair and equitable rates and charges, and no free service.

Mr. Hartman continued with his brief and warned that Melbourne and its citizens can no longer afford to subsidize growth in West Melbourne. The GAI audit shows that is exactly what is happening. He referenced Melbourne's April 4, 2008 draft proposal, which provides for the following:

- It uses the modified North Miami Beach/Miami-Dade WASD model contract.
- It permits West Melbourne to purchase normal increase in flows.
- It allows West Melbourne to purchase additional volumes occurring by virtue of extraordinary demands at higher prices but still significantly lower than if West Melbourne bought from Palm Bay or built its own plant.
- It creates an option for West Melbourne to build its own or purchase from others subject to definitive close out date for growth purchases.
- It permits West Melbourne to maintain its current flow at the Melbourne plant.

Mr. Hartman pointed out that West Melbourne's consultants said it would cost them \$12 per gallon to provide treatment plant capacity. Right now, Melbourne only charges \$4 per gallon and Palm Bay's price is \$8 per gallon. If West Melbourne proceeded with their own plant, they would pay three times the capital costs than Melbourne offers right now. Mr. Hartman remarked that not well-informed decision makers are bringing up that kind of situation. It is not a prudent investment of citizens' money; however, the return proposal to West Melbourne gives them the ability to build their own plant because that is what they requested.

The guiding principles in the City's return proposal are:

**Fair rates and charges** – Each customer pays the same for the same amount of water. Based on 2007 analysis and actual flows, West Melbourne is 8.46% of the revenues, yet it is 10.63% of the flows. Mr. Hartman added that he believes this is understated because the meters are way too large and there is a lot of flow that goes unregistered. A large portion of the unaccounted for water in Melbourne's system is due to West

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Melbourne. The percentage is 25.72% under-recovery for flows and revenues. In the last calendar year, the citizens of Melbourne subsidized the citizens of West Melbourne by \$441,791.31.

**No subsidized service** – Melbourne should not be subsidizing any customer base. In Melbourne, the developer of a new home pays an impact fee of \$1,340. In West Melbourne that cost is \$1,072. The difference is inappropriate. West Melbourne is using the same capital assets and the fee should be the same.

**No free service** – Simply put, this is a bond covenant.

**Lawful impact fees** – Melbourne should be charging the current and local costs of replacement capacity in its plant. GAI consultants determined that West Melbourne uses 100% of the impact fee eligible assets as a result of peaking factors, storage and transmission. There should be no subsidy and the 80% level should go out the window. This is a rate that Melbourne can change. If this is not changed our customers will have to pay increased rates and charges to cover the cost of future indebtedness. We will not have capital reserves to offset capital needs.

Mr. Hartman informed Council that several years ago, the Florida Legislature passed the Impact Fee Act. He noted that Melbourne's impact fee study was done about a year before that Act. The law was pushed by the developers to ensure that cities had the adequate capital dollars to build the next increment of capacity. In the last seven years the cost of utility construction has more than doubled. The City of Melbourne's capital charges haven't kept pace with the cost of escalation of construction. The purpose of the law is to ensure that when you have to replace capacity and expand, adequate capital dollars are available thereby not creating a cost burden on existing customers. Growth is supposed to pay its own way and that's why it is so important that the Impact Fee Act be followed. Mr. Hartman pointed out that those who have the highest percentage of growth benefit the greatest from capital charges being too low. West Melbourne is getting the greatest benefit from Melbourne's capital charges.

**Proper facilities** – The current water agreement provides that West Melbourne is supposed to mitigate peaking, highly variable flows, etc.; however, West Melbourne does not. Melbourne must enforce the provisions of its contract and require West Melbourne to have proper facilities. As a sequential potable water system, appropriate storage, re-pumping and transmission facilities meeting City industry/regulatory standards must be built.

A sequential potable water system is a purchase for re-sale utility. The utility making the purchase has a duty to provide adequate storage, re-pumping and transmission. This is not the case with West Melbourne and, because of that, West Melbourne has worked very hard to get oversized master meters.

As a side note, Mr. Hartman said that if you look at the build-out the West Melbourne consultants provided to their City Council, provide a safety factor of two, and provide a

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maximum peaking factor, then you will see that the master meters are only 600% oversized. That is why Melbourne doesn't get paid for every dollar going through those meters. Often, West Melbourne sells more water than they buy from Melbourne. That number should be at least 10 – 15% less due to losses in the system, flushing, fire flow, etc.

Mr. Hartman discussed the adverse impacts if Melbourne accepted West Melbourne's proposal. The future capital losses, the base facility charge losses on a present value basis, the bulk discount loss, the annual subsidy, loss of economy of scale, and stranded costs and damages until West Melbourne's capacity is replaced totals \$55.9 million for the 30-year duration of the new contract. Mr. Hartman stated that he could not recommend Melbourne accept that proposal.

Mr. Hartman pointed out that this proposal is also adverse to West Melbourne. He does not believe the citizens of West Melbourne have been asked if they want their water rates to triple. Again, the capacity cost per the West Melbourne consultant is approximately \$12 per gallon compared to Melbourne at \$4 per gallon. In treatment costs alone – if you assume efficient operations – West Melbourne costs would be \$1.50 per 1,000 gallons compared to Melbourne at less than one dollar.

Mr. Hartman said that the recommendation is to reject West Melbourne's proposal. West Melbourne's proposal breaches numerous terms and conditions of previous agreements and creates potential competing water resource impacts. He added that Melbourne is the poster child for alternative water supply with the use of surface water and reverse osmosis. Additionally, the proposal violates bond covenants and duplicates assets.

Mayor Goode asked who installed the oversized meters. Mr. Hartman explained that West Melbourne requested the meters. Due to fire flow requirements and because they did not have adequate looping and other facilities, Melbourne's professional engineers were compelled to accept the oversized meters. We cannot restrict the public health, safety and welfare for fire protection. Mr. Hartman revealed that Melbourne engineers were placed in an untenable position.

Mr. Hartman reviewed the recommended actions outlined in his report:

- Amend the agreement to provide for full capital charges, require adequate facilities on West Melbourne's side so we can downsize and modify the meters to accurately measure flows, and bring the system into the St. Johns River Water Management District sequential consumptive use permit. West Melbourne is not in compliance with their own sequential CUP and they have to have an action plan associated with that.
- For newly annexed areas in West Melbourne, require proper fees, charges, planned facilities and infrastructure with commensurate SJRWMD water use allocations. And, require storage, re-pumping and looping transmission mains within West Melbourne.

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- Melbourne could provide retail service for future areas that may be annexed into West Melbourne, if they agree, or Melbourne could provide wholesale service as long as they have proper facilities.

Mr. LaRusso asked who would have to agree to Melbourne providing retail service in future areas that may annex into West Melbourne.

Mr. Cloud stated that the service area west of I-95 was delegated to Melbourne in 1983; bonds were issued on that. Melbourne does not need the consent of West Melbourne to be the retail water provider in that area. Additionally, West Melbourne signed an agreement in 1986 recognizing that service area. If they take any action to violate that agreement, it's a breach of contract. They have done that by signing an agreement with Dworkin/Ferrell. Mr. Cloud informed Council that he will be asking for authorization to send a notice of breach of contract.

Continuing with the recommended actions, Mr. Hartman noted that Melbourne should:

- Enact modifications to our ordinances, resolutions and utility standards that would implement the recommendations.
- Continue to serve West Melbourne under the terms of the various agreements and amendments.
- Educate West Melbourne as to the Melbourne service benefits in the financial, regulatory, environmental and water quality areas.

Mr. Hartman concluded by stating that a regional water system is the best thing for both cities.

In response to Mr. Thomas, Mr. Cloud commented that there is nothing wrong with West Melbourne charging an additional amount to its customers because they are the retail provider. However, the amount they are being charged for the water now is being subsidized by Melbourne's customers to the tune of about 25%.

Mrs. Corby asked Mr. Cloud to elaborate on the 1983 action by the South Brevard Water Authority. Mr. Cloud explained that the Florida Legislature created an entity called the South Brevard Water Authority, which was established to create new water supplies. He noted that the SBWA had an unparalleled record for spending money on lawsuits and never delivered a water supply. The SBWA was taken out of existence in the mid 1990s by the Florida Legislature. However, when created, they were given the power by the Legislature to delegate, designate, and grant service areas in Brevard County. The South Brevard Water Authority granted the area west of I-95 to Melbourne.

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Mrs. Corby asked if that arrangement is still valid. Mr. Cloud replied yes and said it is still in all the Comprehensive Plans. And, Melbourne has a contract signed by West Melbourne in 1986 specifically recognizing the designation of service area by the SBWA. Mrs. Corby said that Melbourne could serve that area whether the property is located in West Melbourne or not. Mr. Cloud said that is his opinion. He added that Melbourne can do this without regard to an agreement; however, that would not be his final recommendation.

Mr. Cloud said that most of the disputes between the two cities have been about annexation, not water. West Melbourne wants the water to annex and he does not believe Melbourne is obliged. He added that his recommendation is that we enter into an agreement where Melbourne will provide retail water on the west side of I-95. West Melbourne can provide sewer. The agreement should be neutral to annexation. In other words, higher impact fees should not be charged. In the beachside communities, Melbourne charges 110% of the in-city rates on a retail basis. However, when developers are looking at annexation, they don't look at the monthly rates because they don't pay them. Maintaining steady impact fees will keep a level playing field.

Continuing, Mr. Cloud said to finish this, we need to proceed with fixing the cost recovery system. Melbourne does not need an agreement to do that. Melbourne has the power vested to set appropriate rates. Additionally, we can set the meters right, right now. These things should be done now and annexation should be left for another day.

Deputy City Manager Howard Ralls addressed the topic of West Melbourne's Comprehensive Plan amendment to approve water concurrency without Melbourne's review/approval. Mr. Ralls explained that concurrency is a process for determining that you have adequate capacity to meet the needs of new development and to make a plan for providing capacity for future development.

Mr. Ralls reviewed his memorandum dated July 1 to the City Manager on this subject. An excerpt from that memo follows in italics. (The indented portions are excerpts from the West Melbourne Planning Director's memorandum outlining West Melbourne's proposed text amendment.)

*At its June 17, 2008 meeting, the West Melbourne City Council approved transmitting to the Department of Community Affairs an amendment to the Intergovernmental Coordination Element of its Comprehensive Plan to remove the reference to Melbourne as the issuer of the potable water certificates. The Melbourne City Council objected to West Melbourne staff's intentions to take this very same proposal to its Council back in November 27, 2007.*

*What West Melbourne proposes to change:*

***“City staff is prepared to coordinate with Melbourne ... after the City issues water concurrency within our city limits. The City shall forward the conditionally approved water concurrency along with the***

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***requirement for the developer to pay Melbourne’s impact fees directly to Melbourne.”***

*West Melbourne, a Melbourne water customer, is citing a plan to help itself to Melbourne’s water supply without application to Melbourne, without verification that capacity is available, without a determination that it will not cause undue hardship or harm the Melbourne water supply, without verification that it will not cause a violation of Melbourne’s permits, and for use in areas previously designated as Melbourne’s retail water service area.*

*Our current agreements contemplate West Melbourne paying capacity reservation charges it collects from its retail customers. We have requested West Melbourne staff to follow this protocol on several occasions. Melbourne only approves water concurrency (and accepts the capacity reservation fees) for its customers. The City of West Melbourne is Melbourne’s customer, not land owners/developers in West Melbourne.*

At this point, Mr. Ralls pointed out that Melbourne has been reviewing concurrency applications from West Melbourne and has approved every application for concurrency during this entire issue. Mr. Ralls continued.

*How West Melbourne proposes to evaluate available capacity:*

***“The City of West Melbourne will assure that capacity is available by reviewing the monthly FDEP water reports about Melbourne’s water plant ...”***

*Available water capacity cannot be determined from the Florida Department of Environmental Protection (FDEP) report because the report only provides specific operational data. This document does not address committed capacity. Melbourne’s concurrency review process determines available capacity to be plant capacity less current demand less outstanding (committed) demand. Further, Melbourne’s concurrency review procedures address the capability of its pumping stations and piping network to deliver water to the customer. West Melbourne is unable to evaluate the capability of Melbourne’s distribution system to deliver water.*

***“The City of West Melbourne will assure that capacity is available by relying on the contractual obligations...”***

*Melbourne has no contractual obligation to provide water to areas that West Melbourne has annexed since 1997 or proposes to annex in the future. The Articles of Agreement for the Sale and Purchase of Water between the Cities of Melbourne and West Melbourne and subsequent amendments through 1997 are referenced. West Melbourne’s own Comprehensive Plan contains an admission that this is how the agreements are interpreted.*

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*Melbourne may approve water capacity for such newly annexed areas on a case-by-case basis but then only after review of the development's water needs in accordance with the procedures for concurrency review established by the Melbourne City Code. Since West Melbourne's plan is to bypass Melbourne's concurrency review process, it could issue water capacity certificates to development in areas not covered by the water agreement.*

***“The City of West Melbourne will assure that capacity is available by relying on the overall consumptive use permit for Melbourne's surface water and groundwater resources.”***

*West Melbourne relying on Melbourne's consumptive use permit to make any decision would be a change from its historic lack of attention to its own consumptive use permit. West Melbourne has violated its consumptive use permit by exceeding the allocated withdrawal every year since it was approved. Further, it would be impossible for West Melbourne to make any determination of available capacity from Melbourne's consumptive use permit since the permit contains no information on how much water is being withdrawn or how much of the withdrawal allocation may already have been committed by Melbourne in its concurrency review process.*

***“The City of West Melbourne has relied on Melbourne to assess water plant capacity. This will not change...The City of West Melbourne fully intends on consulting with Melbourne by informing them on a monthly basis of pending building permits and certificates of occupancy that are reserving capacity.”***

*Again, the West Melbourne plan is merely to inform Melbourne that it has helped itself to Melbourne's water.*

*As a water provider for over 50 years, Melbourne knows that assuring the availability of an adequate water supply for future users requires that action be undertaken to expand plant production for additional capacity many years in advance of the anticipated need. Melbourne's concurrency process requires review of planned projects at the preliminary subdivision approval or site plan phase with an accounting for their anticipated capacity at that first opportunity. Design, permitting, and construction of new facilities can take five to eight years.*

*In summary, West Melbourne's plan to issue water concurrency within its city is a plan for West Melbourne to help itself to Melbourne's water supply without consent, to utilize the water allocated to Melbourne by its CUP without approval, and to impose additional demands on Melbourne's water production and water distribution facilities without authorization.*

During Mr. Ralls review of the above, the following discussion occurred:

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Mr. LaRusso asked Mr. Cloud to outline the City's options. Mr. Cloud responded that if Melbourne provides retail water service in the new areas west of I-95, this problem will largely go away. Melbourne will be the one signing contracts with developers.

Mrs. Corby asked Mr. Cloud if he is saying that we should forget about the issues with West Melbourne because we can provide water beyond West Melbourne. Mr. Cloud replied no. He clarified that one way to resolve the issues is for the two cities to agree that Melbourne will be the retail water provider west of I-95. In essence, he believes they agreed to that before; however, it would be helpful to do this under conditions that make it neutral to annexation. He added that this was offered and he is working on a written proposal outlining this. West Melbourne did not reject the concept out of hand; however, they have not had an opportunity to review the written proposal in detail.

Mr. Cloud confirmed for Mrs. Palmer that the recommendation is twofold – Mr. Hartman's proposal to make changes within the current boundaries and then Melbourne becoming the retail provider west of I-95. Mr. Cloud added that the properties west of I-95 would annex wherever they want to annex. Water would not be used as a means to gain advantage over annexation.

In response to Mrs. Palmer, Mr. Schluckebier noted that the City's current policy of requiring annexation in return for City water doesn't apply to the properties "on the frontier." It applies to properties that are currently adjacent to or on the edge of City boundaries.

Mayor Goode pointed out that the City has a 10- or 12-inch waterline on Simon Road, west of I-95. This is not new territory for the City of Melbourne.

Mr. Cloud confirmed for Mr. LaRusso that this has been verbally proposed to West Melbourne. The West Melbourne City Manager, City Attorney and special counsel asked for a written proposal. Mr. Cloud added that he is working on writing the proposal.

In response to Mrs. Corby, Mr. Cloud reviewed what has occurred between the two cities since the joint meeting held in Indialantic. In January 2008 they began working on a rewrite of the 1978 agreement. At this meeting, Mr. Hartman reviewed West Melbourne's March 2008 proposal. As part of that proposal, West Melbourne said they wanted all the retail service area west of I-95.

At this point, Mr. Ralls returned to the microphone and picked up with the portion of his memo, which indicates that West Melbourne intends to rely on Melbourne's consumptive use permit to determine if capacity is available. Mr. Ralls concluded his brief.

With regard to West Melbourne's proposed Comprehensive Plan amendment, Mr. Schluckebier said that Melbourne has objected and will continue to object. He noted that staff wanted Council to be fully briefed in the event that there are questions from West Melbourne elected officials and in the event Council wishes staff to take alternative action. He stressed that the City does not believe West Melbourne's action in regard to

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concurrency is the right course and we believe that using every means possible to object is the appropriate course. This is definitely one of those lines in the sand and the proposal is just wrong.

Moved by Contreras/LaRusso to reject the proposal by West Melbourne.

A brief discussion followed regarding Melbourne's process in reviewing concurrency for projects in West Melbourne. In response to Mrs. Corby Mr. Ralls clarified that West Melbourne is proposing to stop sending concurrency applications to Melbourne and to issue concurrency without Melbourne's involvement. The City Manager added that they have sent a proposal to the Department of Community Affairs, which would allow West Melbourne to change their procedures and avoid Melbourne's review.

The City Manager pointed out that this is a workshop meeting. The motion will be viewed as Council providing staff with direction on these issues, rather than binding action being taken.

The question was called. Motion carried unanimously.

Mr. Contreras referenced Mr. Hartman's recommendations to make our system whole and eliminate/cease the subsidies. He asked how soon ordinances can be drafted to stop the hemorrhage of the City's system. The City Manager said that most of these issues can be resolved in the next 60 – 90 days. (Later in discussion, Mr. Hartman said that in addition, a 30-day notice period to our customers is required by Florida Statutes.)

Mrs. Palmer pointed out that Mr. Hartman's proposal was very succinct and well put. Assuming Council agrees, she asked how long it would take the City of West Melbourne to comply with everything Melbourne is asking them to do within their current city limits.

Mr. Hartman said it would take about two years to design, permit and construct the necessary facilities. Additionally, he informed Council that there will be a 30-day notice period required before we can proceed with making rate changes.

Mrs. Palmer asked if the impact fees that have already been paid or that will be paid in the future go toward their infrastructure needs for their delivery system. Mr. Hartman replied that West Melbourne sets its own impact fees and they would have to set them at a level that would fully reimburse us and to pay for the capital needs of their system. Mrs. Palmer pointed out that this would be substantially lower than building a new water plant. Mr. Hartman replied absolutely.

Mayor Goode asked staff if further action is needed at this meeting. Mr. Schluckebier responded that Council has provided staff direction to send West Melbourne notice that its proposal has been rejected. The second issue is the set of recommendations outlined by Mr. Hartman. If Council adopts the recommendations, staff will do its best to return with ordinances within the timeframe outlined.

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Moved by Contreras/Meehan to approve the recommendations by Hartman/GAI Consultants.

Mr. LaRusso asked how we enforce these actions. The City Manager said he believes we will see responsive actions. He added that we are either going to continue having a good working relationship in buying and selling water in a way that is reasonably similar to what we have done in the past 30 years, or we are about to part company.

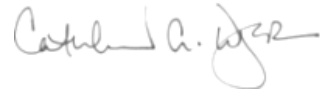
Mr. LaRusso commented that allocating \$100,000 to litigate is a heck of a lot cheaper than paying \$55 million; therefore, he sees the strategy.

The question was called. Motion carried unanimously.

4. Adjournment

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

The meeting adjourned at 8:24 p.m.



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City Clerk – 7/21/2008

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