

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008



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

1. Pastor Pete Inman, Lighthouse Assembly of God, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Kathy Meehan	Vice-Mayor, District 3
	Mark LaRusso	Council Member, District 2
	John Thomas	Council Member, District 4
	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

Absent:	Richard Contreras	Council Member, District 1 (schedule conflict)
	Cheryl Palmer	Council Member, District 5 (schedule conflict)

4. Proclamations and Presentations

Mayor Goode presented a proclamation recognizing the 50<sup>th</sup> Anniversary of Florida Institute of Technology to Carey Gleason, Assistant Vice President for Advancement and Community Relations.

5. Approval of Minutes – August 12, 2008 regular meeting

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

Mayor Goode announced that at the request of the applicant and without objection the Florida Institute of Technology site plan (Item #16) will be postponed until September 16.

6. City Manager's Report

**Richman Group (Parkway Place Apartments)** – City Manager Jack Schluckebier reported the following schedule changes: The Planning and Zoning Board will consider the item on September 18 (instead of September 4) and the City Council will consider the item on October 14 (instead of September 30).

**Review of City Council policies** – Council Member Joanne Corby asked why this item does not appear on the agenda. She pointed out that at the May 27 City Council meeting, Council made a decision to continue with the August 26 meeting date although two

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

members would be absent. Following brief discussion and input by the City Clerk, Mr. Schluckebier stated that since this item relates to Council policies, staff believed there would be significant Council interest in this item or historical information to share. Therefore, staff made a decision to delay the item.

***Tropical Storm Fay*** – Mrs. Corby stated that she thought the City had a pay plan during disasters and asked if employees who worked while City Hall was closed will be provided pay. Deputy City Manager Amy Elliott confirmed that the City has an emergency operations pay policy. Employees will be paid in accordance with that policy, which considers their classification and whether they are covered by a collective bargaining agreement.

Continuing, Mrs. Corby asked when the details of storm related information will be distributed to Council. The City Manager replied that within the next week, summary information regarding damages, assessments, ongoing activities and opportunities for individuals to receive assistance will be provided to Council.

Mrs. Corby asked if staff could review the engineering plans for the areas that flooded. She commented that in the last several years the City spent over two million dollars on pipe replacement and the areas that flooded don't seem to be listed in the priority plan.

The City Manager said that staff can attempt a follow-on review of this item; however, in many cases the flooding wasn't related to piping. Systems were simply overloaded and overcharged. Mayor Goode added that this is the most rainfall he has seen in Melbourne during his lifetime; this was a 100-year storm event. Melbourne received 26 inches of rain about a mile from his house. Additionally, the Mayor commended the police, fire and public works personnel for their hard work and effort during the storm.

***Employee satisfaction survey*** – Council Member John Thomas asked for an update. Mrs. Elliott said that the Brevard Community College facilitator is finalizing the report and staff expects to receive it shortly.

***Dworkin/Ferrell property*** – Mr. Thomas asked for an update. The City Manager stated that their attorney provided Melbourne with a draft agreement under which Melbourne would be the retail water provider. Staff is in the process of reviewing that agreement, and we are hopeful based on conversations that they intend to be our retail customer.

7. Public Comments

Jack Ippel, 2900 St. Mark's Avenue, representing homeowners in the Weston Park Subdivision, commended the City and its employees for actions taken during Tropical Storm Fay. He stated that thanks to Bob Klaproth and the Public Works employees, the residents still have a subdivision. Mr. Ippel described efforts made during the storm to stop flooding in his neighborhood, including the delivery of pumps, an employee swimming to the bottom of a retention area to remove a clog, and the delivery of sandbags.

UNFINISHED BUSINESS

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

8. ORDINANCE NO. 2008-48 (Z-2008-1136) NEW VISIONS PLANT NURSERY: (Second Reading/Public Hearing) An ordinance changing the zoning from C-2 (General Commercial) to C-P (Commercial Parkway) on 1.2± acres, located on the east side of North Harbor City Boulevard, on the west side of Avocado Avenue, south of Mathers Street, and north of McClendon Street. (Owners - John Asunmaa and Michael Cole) (Applicant/Representative - New Visions Full Service Nursery) (First Reading - 8/12/08)

City Attorney Paul Gougelman read Ordinance No. 2008-48 by title. There were no public comments and no disclosures from Council.

Moved by LaRusso/Meehan for approval of Ordinance No. 2008-48 based on the findings and conditions contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: LaRusso, Meehan, Thomas, Corby and Goode

Motion carried unanimously.

NEW BUSINESS

9. COUNCIL ACTION RE: Contract award for reuse distribution improvements at various locations (west end - Hibiscus Boulevard), Project No. 31707, Maxwell Contracting, Inc., Cocoa, FL - \$337,000.

City Engineer Jenni Lamb was available for questions. Council Member Mark LaRusso pointed out that this item and the next agenda item call for a 15% contingency. He said he thought the City typically provided a 10% contingency on construction projects. Mrs. Lamb explained that it depends on the nature of the project, its location, and potential issues that might be encountered. She added that the contractor is not awarded contingency; the City sets aside contingency.

Mrs. Corby asked if this contractor has done work for the City. Mrs. Lamb replied yes and added that we have not had any problems with this contractor. Additionally, Mrs. Lamb confirmed for Mrs. Corby that this project relates to new piping for the distribution of reuse, which most people use for irrigation. This is not a stormwater related project.

Moved by Thomas/LaRusso for approval of the construction contract with Maxwell Contracting, Inc. in the amount of \$337,000 for the Reuse Distribution Improvements at Various Locations – West End (Hibiscus Boulevard), Project No. 31707. Motion carried unanimously.

10. COUNCIL ACTION RE: Contract award for waterline replacements at various locations (Ballard Park, Phase 2, North Harbor City Boulevard), Project No. 30407, Maxwell Contracting, Inc., Cocoa, FL - \$93,000; and transfer of \$68,000 from Water & Sewer Miscellaneous Capital Improvements to supplement this project budget.

Mrs. Lamb was available for questions.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Moved by LaRusso/Thomas for approval of the construction contract with Maxwell Contracting, Inc. in the amount of \$93,000 for the Waterline Replacement – Various Locations, Project No. 30407 and a transfer of \$68,000 from Water & Sewer Miscellaneous Capital Improvements to supplement this project budget. Motion carried unanimously.

11. CONSENT AGENDA:

Council Member LaRusso removed items “a” and “c” and Council Member Corby removed items “c”, “d”, “f”, “i” and “m” from the consent agenda.

Moved by Thomas/Meehan for approval of the consent agenda with the exception of Items “a”, “c”, “d”, “f”, “i” and “m”. Motion carried unanimously.

- a. Amendment No. 1 to the contract for professional engineering consulting services associated with the West Melbourne Master Meter Water Supply Evaluation, Project No. 35207, Reiss Engineering, Inc., Winter Park, FL - \$15,000. (See next agenda item for action.)
- b. Amendment No. 2 to the contract for professional engineering consulting services associated with the management of the Unidirectional Flushing Program, Project No. 31306, Reiss Engineering, Inc., Winter Park, FL - not to exceed \$46,000.
- c. Approval of an Agreement for Legal Services between Eisenstein Malanchuk LLP, of Washington D.C.; GrayRobinson, P.A.; and the City of Melbourne for collection of funds on old insurance policies. (See next agenda item for action.)
- d. Approval of a 48-month agreement (Toro Financing) for the lease/purchase of four Toro 3250-D Greensmowers, Esco Turf Supply, Lake Mary, FL - \$111,433.32 with \$1 buyout at end of lease. (See next agenda item for action.)
- e. Contract renewal for the purchase and delivery of Quicklime for Water Reclamation, Carmeuse Lime & Stone, Luttrell, TN - \$194.50/ton; estimated total annual cost of \$97,250.
- f. Contract awards for traffic sign blanks, post, and reflective sheeting, Vulcan Signs, Foley, AL - \$22,492; Osburn Associates, Inc., Logan, OH - \$21,962.25; 3M Corporation, St. Paul, MN - \$39,521.52; total estimated annual cost of \$83,975.77. (See next agenda item for action.)
- g. Contract award for the purchase of sewer manhole rehabilitation services, Dallas 1 Construction & Development, Inc., Thonotosassa, FL - at unit prices; total estimated cost of \$27,000.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

- h. Contract award for repairs to traffic signals at the intersection of U.S. 1 and Prospect Avenue, Traffic Control Devices, Inc., Altamonte Springs, FL - \$21,961.17.
- i. Approval of a memorandum of agreement between the City of Melbourne and the Fraternal Order of Police. (See next agenda item for action.)
- j. Approval of a proposed extension of the June 26, 2008 payment timeframes within the Development Agreement for the Vues (September 26, 2008).
- k. Lien Rescission CE-08-002: Approval of a request for lien rescission from \$7,750 to \$0 for property located at 1976 Southland Avenue. (Owner - Julitte Audrie Wilson-Stallworth)
- l. Resolution No. 3014: A resolution approving a Renewal Lease Agreement between the City of Melbourne and J.L. Golightly Chapter 32, Disabled American Veterans, Inc., for a 5-year period at \$1 per year for property located at 2265 North Harbor City Boulevard for the operation of a veterans' service clubhouse facility.
- m. Resolution No. 3015: A resolution implementing Third Quarter Budget Review recommendations. (See next agenda item for action.)

12. ITEMS REMOVED FROM THE CONSENT AGENDA

- a. **Amendment No. 1 to the contract for professional engineering consulting services associated with the West Melbourne Master Meter Water Supply Evaluation, Project No. 35207, Reiss Engineering, Inc., Winter Park, FL - \$15,000.**

Mr. LaRusso pointed out that the City spent thousands of dollars for a review by GAI Consultants (reference July 9, 2008 special meeting). The result is that West Melbourne doesn't agree with the findings. He added that he's not willing to move forward with another \$15,000 for consulting services in light of the conflict with West Melbourne.

The City Manager reported that there is a technical engineering disagreement between West Melbourne's consulting engineer and Melbourne's engineer. Both parties have agreed to accept the evaluation by Reiss as the ultimate answer. Regarding the evaluation performed by GAI Consultants, the City of Melbourne engaged this firm to prepare for a threatened lawsuit by West Melbourne. GAI was purely the City's consultant and we did not expect West Melbourne to agree with their results.

Following brief discussion, City Engineer Jenni Lamb elaborated on the scope of services and confirmed that she believes this contract will resolve the specific issue outlined. On a technical level, she said she believes Melbourne and West Melbourne will reach agreement.

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

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

**c. Approval of an Agreement for Legal Services between Eisenstein Malanchuk LLP, of Washington D.C.; GrayRobinson, P.A.; and the City of Melbourne for collection of funds on old insurance policies.**

Mr. LaRusso expressed concern that there is a conflict between this item and Item 18 (Melbourne Economic Enhancement District/Brownfield Area) as it relates to liability. He asked if sites covered by the MEED would be exposed to further liability as a result of Eisenstein's investigation.

Attorney Gougelman replied no and clarified that the City is looking to collect on previous expenditures based on insurance policies in effect in the 1950s, 1960s and early 1970s. The investigation will be primarily pointed at two projects on Airport property. One is a mosquito impoundment facility and the other is the old city dump. Both those projects are in compliance now with environmental authorities, but there have been past expenditures of money.

Mr. LaRusso said he wanted to ensure that Mr. Eisenstein would not encounter difficulties with collecting on old policies based on language in the proposed MEED agreement.

A brief discussion continued.

Mrs. Corby said she also pulled this item because she thought it was related to the Brownfield Area item. She added that staff assured her it is not. Responding to Mrs. Corby, Mr. Schluckebier confirmed that this item will not place an extra burden on staff.

Mrs. Corby said it is her understanding that the outside attorney will review past information and, if a policy is found and successfully prosecuted, the City will receive 65% of the amount recovered. Attorney Gougelman confirmed that is correct.

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

**d. Approval of a 48-month agreement (Toro Financing) for the lease/purchase of four Toro 3250-D Greensmowers, Esco Turf Supply, Lake Mary, FL - \$111,433.32 with \$1 buyout at end of lease.**

Mrs. Corby pointed out the cost and asked how desperately we need these mowers.

Leisure Services Director Mary Ann Bowman stated that they are needed. These are specialty mowers designed to mow the greens. Most are replaced every three to five years. The mowers being replaced are over five years old and can no longer be repaired. Mrs. Bowman added that the greens are the bread and butter of the golf courses. If they are not mowed seven days a week, they suffer. Mrs. Bowman stated that if there were any way to push this item back, they would; however, the lease has been budgeted and this item was planned.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Mrs. Corby said that at one point there was discussion about privatizing the mowing services for the City. She asked if the mowing of abandoned property could be tied in with this item. Mrs. Corby stressed that she doesn't believe the City needs to spend this kind of money now.

Mrs. Bowman replied that local lawn maintenance companies do not have the specialty equipment needed for the greens. Following brief discussion, she pointed out that the City's courses are 100% self-sufficient. Mrs. Bowman concluded by saying she appreciates the concern about cost. The City does not want to charge golfers more and this purchase will not result in an increase in fees.

Mr. Thomas asked how much of this expense will be paid from money derived from the golf courses and Mrs. Bowman replied 100%.

Mr. LaRusso discussed the recovery efforts that have been made over the past few years at the golf courses. Changes, including the marketing plan, have enabled the City to raise fees and provide better service to the golfers. The end result is that the golf courses are 100% self-sufficient.

In response to Mrs. Corby, Mrs. Bowman said that these mowers are specifically for the greens. The courses have different mowers for the fairways, which are also kept as long as possible. The fees generated at the courses pay for the equipment.

Moved by Meehan/Corby for approval of Item "d." Motion carried unanimously.

- f. Contract awards for traffic sign blanks, post, and reflective sheeting, Vulcan Signs, Foley, AL - \$22,492; Osburn Associates, Inc., Logan, OH - \$21,962.25; 3M Corporation, St. Paul, MN - \$39,521.52; total estimated annual cost of \$83,975.77.**

Mrs. Corby pointed out that all the providers for this item are located out of state. She asked if the City could make an extra effort to communicate with local providers who might not use DemandStar (on line vendor/supplier system).

Mrs. Lamb replied that not many companies provide sign blanks; however, she said the comment is duly noted for other projects. Mrs. Lamb added that the City does make an effort to notify local contractors.

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

- i. Approval of a memorandum of agreement between the City of Melbourne and the Fraternal Order of Police.**

Mrs. Corby commended staff and Attorney Hament for their work on this contract. She stated that she has a concern with Article 20, Call Back and Stand-by Procedure. The on call pay has been doubled from two hours to four hours. She asked when this article was rewritten.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Deputy City Manager Amy Elliott pointed out that the regular on call pay remains at two hours. Weekends and holidays increased from two hours to four hours. She added that the negotiation process goes both ways.

Andy Hament, Ford & Harrison, representing the City of Melbourne during labor negotiations, explained that the only other change in this area from the last contract was to make on call mandatory. During the last contract period, the program was voluntary. This contract provides for a mandatory program plus the “kicker” for weekends and holidays.

Mrs. Corby stated that this program was implemented in 2005. She asked what the City did prior to that time and if we had a problem getting people here to provide service. Attorney Hament replied that it is his understanding there was a big problem in certain areas; the on call program was implemented in those areas.

Discussion continued. Mrs. Corby stated that she feels the on call program is a waste of taxpayers’ money. Mr. Hament replied that the extra two hours was negotiated months ago. He confirmed for Mrs. Corby that no changes were made to this portion of the contract in August.

Continuing, Mrs. Corby said she is concerned about the language in Article 33, Pension. The City has spent a lot of time and money trying to move to the Florida Retirement System. She stated that she reads the language in Article 33 as requiring any new employee to go to the union to decide which pension plan to join.

Mrs. Elliott explained that Section 33.1D. makes it clear that this is a concept the FOP and the City wish to explore. It wasn’t intended to be implemented immediately. The police pension plan exists today and any new officer would join that plan. This language provides the opportunity to explore transferring to FRS in the future.

Following discussion, Mrs. Corby said she would like to postpone this item until the next meeting out of respect for the two Council Members who are not present. Her motion to postpone did not receive a second.

Mayor Goode stated that both sides have negotiated this contract and Council’s role is to approve the agreement. Council should not interfere with union business and he feels this discussion is way out of line.

George Hachigian, general counsel chief of staff for the Fraternal Order of Police, informed Council that the City’s negotiating team along with representatives from the FOP spent many hours making this the best agreement in the County. He noted that he considers this to be one of the better contracts in the State of Florida. Mr. Hachigian encouraged Council to ratify the agreement so that the members can begin receiving the benefits they are waiting for.

Moved by Thomas/Meehan for approval of Item “i.”

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Vice Mayor Kathy Meehan recalled that the memorandum from the Police Chief about on call pay shows the on call program to be very cost effective.

The question was called. Motion carried unanimously.

**m. Resolution No. 3015: A resolution implementing Third Quarter Budget Review recommendations.**

Mrs. Corby stated that the General Fund is \$2.5 million in the hole. She pointed out that the backup material for this item states that “the poor economic conditions also affect the Golf Course Fund revenue...” She pointed out that this statement jumped out at her because of the earlier item on the consent agenda to award the contract for mowers. Mrs. Corby stated that she doesn’t think we are thinking everything out as thoroughly as we need to. She added that she is disappointed that we are not digging deeper to find savings.

Mr. LaRusso offered that he digs pretty deep and brings a lot of ideas to the table. He added that he doesn’t appreciate being broad brushed with comments.

Moved by LaRusso/Meehan for approval of Item “m.” Motion carried. Mrs. Corby voted nay.

13. RESOLUTION NO. 3016: (First Public Hearing) A resolution adopting an Interlocal Agreement between the Brevard County Board of County Commissioners and the cities and towns of Cape Canaveral, Cocoa, Cocoa Beach, Indialantic, Indian Harbour Beach, Malabar, Melbourne, Melbourne Beach, Palm Bay, Palm Shores, Rockledge, Satellite Beach, Titusville, West Melbourne, and the School Board of Brevard County, relating to school facility planning and school concurrency matters. (P&Z Board - 1/03/08)

Mrs. Dittmer briefed Council and reviewed the agenda report. She noted that the next item on the agenda also relates to school concurrency. The following is an excerpt from the agenda report:

*On January 22, 2008, Council adopted a resolution approving an interlocal agreement between the City and the School Board for the purposes of implementing school concurrency. Since then, the Comprehensive Plan amendments associated with the interlocal agreement have been reviewed by the Department of Community Affairs (DCA). The DCA required multiple changes, which necessitated changes to the interlocal agreement. The agreement has to be re-executed by the local governments in Brevard County and the School Board.*

*This resolution is directly related to Ordinance No. 2008-50; therefore, it will return on the September 16 agenda for a second public hearing.*

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

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Moved by LaRusso/Thomas for approval of Resolution No. 3016, based on the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

14. ORDINANCE NO. 2008-50 (CPA-2007-12/CPA-2007-13) SCHOOL CONCURRENCY: (First Reading/Public Hearing) An ordinance providing for text amendments to the Comprehensive Plan by adding a Public School Facilities Element, and amending the Intergovernmental Coordination Element and the Capital Improvements Element, required components in the formation of a school concurrency management system per Florida Statutes. (Applicant - City of Melbourne) (P&Z Board - 1/03/08)

Attorney Gougelman read Ordinance No. 2008-50 by title. Mrs. Dittmer provided an overview. The following is an excerpt from the agenda report:

*The ordinance provides for the adoption of text amendments to the Comprehensive Plan related to the establishment of a Public School Facilities Element and amendments to the Intergovernmental Coordination Element and the Capital Improvements Element. They correlate with changes on the previous item (interlocal agreement).*

*The Planning and Zoning Board voted unanimously to recommend approval at its January 3, 2008 meeting.*

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

Moved by Meehan/LaRusso for approval of Ordinance 2008-50, based on the findings contained in the Planning and Zoning Board memoranda. Motion carried unanimously.

15. COUNCIL ACTION RE: (Public Hearing) Hearing to consider a request by Norman L. Coates regarding rescission of lien (CE-07-052) in the amount of \$14,600 on property located at 830 Brothers Avenue. (Hearing approved by Council - 7/22/08)

Code Enforcement Administrator Dan Porsi provided an overview of the item. The following is an excerpt from the agenda report:

*Mr. Coates failed to promptly correct code violations on the site involving numerous items (tires, appliances, debris and scrap) incorrectly stored in the yard and open porch areas. He was cited in May 2007 and given time to correct the violation. The violation was not corrected and he was brought before the June 27, 2007 Code Enforcement Board where he was given until July 2 to comply or a fine of \$100 per day would be assessed. At this meeting, Mr. Coates questioned the right of Code Compliance Officer Thomas Kleving to view his property from the adjacent property. Mr. Coates also asked if he would be in violation if he erected a wood privacy fence. Officer Kleving stated he was on the adjacent site with the property owner's knowledge. Additionally, Mr. Coates was advised that screening the property would not constitute compliance and that a permit would be required to erect a fence.*

*Compliance was not met by July 2 and the fine was instituted at \$100 per day. At the July meeting, it was noted that Mr. Coates erected a wood fence without first obtaining a*

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

*permit, which is a separate code case. The former Code Enforcement Board attorney advised Mr. Coates that he would need to provide the City access to the property to verify compliance because of the fencing.*

*The fine continued to run and at the October 2007 Code Board meeting, Mr. Coates questioned the possibility of presenting his own photos to show compliance. The discussion brought out points of possible selective photos and that it would be best to have City staff inspect the property.*

*At the November 2007 meeting, Mr. Coates provided signed testimony from neighbors and photos of his property showing compliance. The Board accepted the evidence and found the property in compliance with an accrued fine of \$14,600.*

*Mr. Coates requested a rescission hearing and was heard at the June 25, 2008 Code Board meeting. Staff advised the board that City costs for this case were \$1,320.16. The case history was discussed and it was recommended by staff to reduce the fine by \$3,000 based on the confusion of Mr. Coates having to have City staff view the property for compliance. Mr. Coates could have used photographic evidence at the October 2007 meeting and obtained compliance a month earlier (30 days at \$100 per day). After a motion to that effect failed, a motion passed recommending the fine remain at the full \$14,600.*

Norman Coates, applicant, questioned whether the Code Enforcement Officer had permission from the adjacent property owner to be on the property. Additionally, he said that the officer indicated he has been going on the adjacent property for the past 11 years. Mr. Coates asked why his property was suddenly found in violation. Additionally, he asked why the fine is so severe and concluded by saying that if the officer didn't have a right to be on the adjacent property, then the violation should be null and void.

Mayor Goode asked Attorney Gougelman to comment on whether our Code Enforcement Officer had a right to access the adjoining property to take pictures.

Attorney Gougelman said there are two issues. The first relates to Mr. Coates saying that his constitutional rights have been violated and the second relates to trespassing.

The Florida Supreme Court and the U. S. Supreme Court looked at the constitutional issue in the context of criminal violations. He noted that in criminal violations, the protections for an individual are higher than in a code enforcement proceeding. The opinions indicate there is no constitutional violation. Cases involved police officers trespassing on private property to obtain evidence for a conviction in a criminal case and police officers using ladders to peer over a fence. The courts found under the federal and state constitution that it's proper to obtain evidence that way. It does not violate a person's rights.

Mr. Gougelman concluded by saying trespassing is not an issue for Mr. Coates, but rather for the private property owner that was trespassed. It does not relate to the Code violation.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Mr. Thomas asked Mr. Coates if there is any reason he didn't come into compliance and then address his complaints. Mr. Coates replied that his first complaint relates to how the officer took pictures of his property. The second issue is that the notice was issued during a holiday period and there was hardly any time to comply. Mr. Coates repeated his earlier arguments and stated that this item was also delayed while the City decided whether he could present pictures showing compliance. There was disagreement over the procedure.

There was a lengthy discussion about the timeline, compliance, photographs and the separate code case involving the fence.

In response to questions, Mr. Porsi explained that Mr. Coates' property has a chain link fence. Mr. Coates put up a six-foot wood fence inside the chain link fence so the City could no longer see the violation. The City Code provides that a fence panel or trellis is considered a garden amenity and therefore exempt from permitting requirements. However, Mr. Coates was informed that the extent of his fencing far exceeded a "garden amenity." Mr. Coates did not ask if he could present his own photographs until the October meeting. The board couldn't decide and the Assistant City Attorney said that the board would look at the photos and decide whether or not to accept them. In November Mr. Coates presented photographs and testimony from the adjacent property owner. During the previous months, no one could confirm whether the property was in compliance. Mr. Coates could not apply for lien rescission until he came into compliance.

Mr. Porsi confirmed for Council Member Corby that the \$14,600 fine on this case has no relation to the fence case. However, the fine in the fence case has been capped at \$5,400. It's an on-going case, but there is no fine accruing. And, until he comes into compliance, he can't ask for rescission in that case.

Mrs. Corby asked how the Code Enforcement Division was alerted to this matter.

Tom Kleving, Code Enforcement Officer attached to the Housing and Community Development Department, said he first saw the violation on the Coates property when he was on the property next door looking at an abandoned vehicle.

Mr. Coates referenced past Code Enforcement Board minutes and said that Mr. Kleving previously indicated that he periodically goes on the adjacent property to assess growth. Mr. Coates stated that if this "violation" bypassed Mr. Kleving for 11 years, then apparently it was okay to have outside storage. It wasn't until his grandmother passed away that he received a violation notice.

In response to Mrs. Corby, Mr. Porsi said that in November 2007 Mr. Coates reached compliance for the outside storage. In December the new case was started for the fence.

Discussion continued about the separate fence violation.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Mr. LaRusso pointed out that the Code Board recommended the fine remain at \$14,600. He asked how staff reached the recommendation of \$11,600. Mr. Porsi said that the \$3,000 is the amount that accrued from October when Mr. Coates asked if he could bring in pictures to show compliance until November when compliance was obtained.

Mr. LaRusso said he would like to know if the Code Enforcement Board showed any compassion or went strictly by the book in recommending no rescission.

James Teele, Code Enforcement Board Chairman, stated that the Code Enforcement Board showed compassion by not going with the maximum fine of \$250 per day. When the applicant requested a lien rescission, the Board felt it was not warranted due to the amount of time it took for Mr. Coates to come into compliance.

Mayor Goode asked Mr. Coates to close.

Mr. Coates concluded by saying the fine is excessive; he does not agree that the Code Board exercised compassion; the cap should have been set earlier; the house is only worth \$29,000; the Code Board lost focus of its role to ensure the safety of the household and the surrounding area; the fine should have been set at \$10 per day; and the pictures should have been accepted.

Mr. Thomas stated that this situation would have cost Mr. Coates nothing if he had complied and addressed the situation in a proper manner. The Code Enforcement Board attempted to work with Mr. Coates and his actions showed disregard for the Code Board. Mr. Coates allowed this situation to spiral out of control; therefore, he will accept the recommendation of the Code Board.

Moved by Thomas/Meehan to support the Code Board recommendation of \$14,600.

Mrs. Corby asked the applicant if he is able to pay the fine. Mr. Coates replied that the City might as well take the house. He can't afford to pay the fine and he's not going to pay the fine. Mr. Coates added that this fine plus the fine for the fence total \$19,000 against a \$29,000 home.

The question was called. The roll call vote was:

Aye: Thomas and Meehan

Nay: LaRusso, Corby and Goode

Motion failed.

Mayor Goode suggested Council accept the fine of \$11,600 as recommended by staff. Mr. LaRusso asked the Mayor if he would be agreeable to a 24-month payment period and the Mayor replied yes. Attorney Gougelman suggested specific wording for the motion.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Moved by Goode/LaRusso to approve the fine remaining at \$14,600; however, if Mr. Coates pays \$11,600 within the next 24 months, the City Manager is authorized to satisfy the lien.

Mayor Goode confirmed for Mrs. Corby that the fence case is a separate issue and can't be combined with this issue.

The question was called. The roll call vote was:

Aye: LaRusso, Thomas, Corby, Meehan and Goode

Motion carried unanimously.

Recessed: 8:50 p.m.  
Reconvened: 9:00 p.m.

16. SITE PLAN APPROVAL (SP-2007-18) FLORIDA INSTITUTE OF TECHNOLOGY, SOUTH CAMPUS, PHASE 2: (Public Hearing) A request for site plan approval to allow for Phase 2 upgrades on a 13±-acre portion of a 57.657±-acre campus zoned I-1 (Institutional), located on the west side of Babcock Street, south of University Boulevard, and north of Florida Avenue. (Owner/Applicant - Florida Institute of Technology) (Representative - Vaheed Teimouri, Teimouri and Associates) (P&Z Board - 8/07/08)

At the request of the applicant, Council postponed this item until the September 16 meeting (see action following Item #5).

17. ORDINANCE NO. 2008-49 (Z-2008-1137AD) DOWNTOWN MELBOURNE EXPANSION AREA, PHASE 1, WEST SIDE: (First Reading/Public Hearing) An ordinance changing the zoning from C-1 (Neighborhood Commercial) (0.89± acres) and C-2 (General Commercial) (13.59± acres) to C-3 (Central Business District) on 72 parcels totaling 14.48± acres, located south of Crane Creek and north of Line Street, between Lipscomb Street and the Florida East Coast Railway. (Applicant - Melbourne Downtown Community Redevelopment Agency Advisory Committee and the City of Melbourne) (P&Z Board - 8/07/08)

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

*All the properties currently have a commercial/medium density residential future land use, which will allow mixed uses permitted in the C-3 zoning district. The Downtown Melbourne Community Redevelopment Area (CRA) was expanded in 2005 into this area. The revised redevelopment plan proposed changing the zoning in the expansion area to C-3 to promote mixed uses and assist in revitalization. City Staff has continued to receive concerns from residents within this portion of the expansion area, west of the FEC Railway, due to the non-conformity of residential uses within the C-2 zoning district. The western area already has the appropriate future land use and does not need to wait for the approval of the change to the expansion area located east of the FEC Railway.*

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

*The City is waiting on a future land use amendment pending Department of Community Affairs approval.*

*The Planning and Zoning Board voted unanimously to recommend approval of this request at its August 7, 2008 meeting.*

Mrs. Meehan asked Mrs. Dittmer how many individuals she is aware of who are negatively affected by the non-conformity issue. Mrs. Dittmer explained that is what brought this to staff's attention. Three or four homeowners over the last year have had problems with refinancing or purchasing property because their property is non-conforming as a single-family residential home in the C-2 zoning district. A bank will not refinance a loan on these properties.

Mayor Goode called for disclosures.

Mrs. Meehan reported that on August 23 she spoke with Pastor Moore, Greater Allen Chapel, who supports the rezoning. On August 26 she spoke with Joe McNeil who supports the rezoning; however, he would like to encourage C-3 zoning to continue south of Line Street. On August 26 she spoke with Yvonne Minus, President of the Melbourne Police Community Relations Council, who supports the rezoning.

Mayor Goode opened the public hearing.

Mark Herendeen, 1309 South Babcock Street, member of the Melbourne Main Street Design Committee, encouraged the City Council to vote yes and stated that crime, drugs, poverty and prostitution could easily be replaced with more appropriate vehicle traffic, safe neighborhoods, families strolling down community streets, tourists, guests, etc. The C-3 zoning will also develop a festive marketplace within the Downtown Melbourne CRA expansion along with the preservation of single-family homes, new retail, professional business development and restaurants. He exclaimed that this is exactly what the economic blight study called for.

Lisa Herendeen, 1309 South Babcock Street, 2004 President of Melbourne Main Street, stated that this will be a positive change for the South Melbourne area and she does not see anything negative that can come from this.

Joe McNeil, 804 Poplar Lane and property owner at 1111 E. Line Street, informed Council that he supports the C-3 zoning; however, he would like to know when the area on the south side of Line Street will be rezoned to C-3. He asked if there is a plan for this area.

Mrs. Dittmer replied that there is no plan at the moment. Much of the property on the south side is zoned C-1. C-1 zoning allows some residential uses, but it still has the higher setback requirements similar to C-2. She concluded by saying that staff can look at this request.

Mayor Goode asked staff to study this request.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

JoAnn Davis, 2801 South Harbor City Boulevard, Melbourne Main Street Design Committee, reported that she is in favor of the C-3 zoning. The rezoning originally encompassed the entire expansion area; however, subsequently it was reduced to this phase. Ms. Davis pointed out that it's a good idea to take this step by step. She's in favor and understands the economic benefits it will bring. Additionally, she looks forward to possibly expanding the rezoning in the future into the other areas.

Ken Ward, 1000 Shorewood Drive, Cape Canaveral, representing Towne Investments and Homes by Towne (developer of the new medical office building on the south side of Crane Creek), stated that they support C-3 zoning and think it's an important incentive for people who may want to invest in the area.

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

Moved by Meehan/Thomas for approval of Ordinance No. 2008-49, based upon the findings contained in the Planning and Zoning Board memorandum.

Mrs. Dittmer confirmed for Mrs. Corby that although this area was added to the CRA in 2005, it is considered one CRA. The expansion area has a different base year, which determines the tax increment financing revenue funds; however, it all goes into one budget.

From the audience Mr. McNeil pointed out that the motion did not include adding property on the south side of Line Street in the rezoning.

Mayor Goode replied that he asked staff to start studying the property located on the south side of Line Street.

The question was called. Motion carried unanimously.

18. RESOLUTION NO. 3017: (First Public Hearing) A resolution establishing the Melbourne Economic Enhancement District (MEED), designating the MEED as a Brownfield Area, and making a Finding of Consistency with the Comprehensive Plan. (Applicant - City of Melbourne) (P&Z Board - 08/07/08)

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

*This resolution requires two public hearings before Council and will not be finalized until after Council approval at the second public hearing on September 16, 2008.*

*The State of Florida Brownfield program is an economic development program offered through the state for properties within a designated Brownfield Area and is not related to the Federal Brownfield Program. The designated Brownfield Area should be contiguous and consist of one or more Brownfield sites, some of which may be contaminated or have the perception of contamination. All parcels within the area are eligible to access state*

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

*funding through the Brownfield program if they qualify, regardless of whether the site is contaminated.*

*City staff has proposed a Brownfield Area that includes the three Community Redevelopment Areas (CRA) (excluding the majority of residential property in the Eau Gallie CRA), the Melbourne Airport Authority properties, and other industrial properties to the west. Of the 5,940 acres, 2,169 acres are Airport Authority property. This area was defined using the guidance of the Florida Statutes allowances and knowledge of properties that may desire to access the economic development incentives. The proposed MEED area contains the two existing Brownfield sites, previously approved by City Council.*

*There are two basic components of the program. One applies only to sites with environmental contamination and provides for partial funding reimbursement for the clean-up of the site through the Department of Environmental Protection. The other program, through Enterprise Florida, applies to all properties within a Brownfield Area, regardless of whether there is any contamination of the site. This incentive will provide for corporate tax credits of up to \$2,500 per job created. The state portion is \$2,000 per job and the remainder could come through local funding, if a funding source was available.*

*The proposed MEED district has been presented to a number of committees and a separate workshop was held on July 31, 2008. All property owners within the proposed area were notified of the workshop and the meetings. The three CRA Advisory Committees were presented with the information by City staff and all three have unanimously recommended approval of inclusion of their respective CRA within the MEED. The Melbourne Airport Authority also unanimously recommended including all airport property within the MEED. In addition, the Melbourne Beautification and Environmental Advisory Committee recommended approval of the MEED to City Council. The Planning and Zoning Board considered this request during its August 7, 2008 meeting, prior to a final recommendation from the Eau Gallie CRA Advisory Committee.*

*After the July 31 workshop, City staff analyzed the areas where concerns had been raised and proposed removing the majority of residential property located within the Eau Gallie CRA. A revised map was presented to the Planning and Zoning Board indicating these potential changes. Several people spoke during the Planning and Zoning Board meeting with concerns about including residential properties in the Eau Gallie area. One person from Downtown Melbourne spoke in favor of the designation. Several Planning and Zoning Board members stated concerns with including the residential areas since there is not a direct benefit to them. Several members also thought the designation should happen on a case-by-case basis, instead of designating a larger area. Based upon these concerns, the Planning and Zoning Board voted five to one to recommend denial at its August 7, 2008 meeting. A reconsideration of these issues by the Eau Gallie CRA Advisory Committee occurred on Thursday, August 14, 2008. At the meeting, the CRA Advisory Committee voted unanimously to endorse/recommend the MEED following deletion of the residential areas as requested.*

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

*In response to the Planning and Zoning Board's concerns, City staff offers the following points. The only opposition to the MEED during any of the meetings has been from residents within the Eau Gallie CRA district and staff is recommending a modified MEED, which does not include the majority of residential properties within this CRA. The intent of designating a large Brownfield Area is threefold: the cost of staff time and the required legal advertisements are significant for each Brownfield Area designated; the lead time to designate an area and meet all of the required meetings is two to three months, which can be critical to a company that may need to make decisions and take action in a much quicker timeframe; and the intent is to use the program as an economic development tool; therefore, staff cannot market this program as an incentive up front without the designation already being in place. The program should help attract new businesses into the area because of the job creation component of the program.*

*These comments are in addition to the specific facts versus myths answers prepared by staff to overcome the anonymous and erroneous letters sent out approximately three weeks ago.*

Note: Prior to the meeting, Council received a copy of a memorandum from Planning and Economic Development to the City Manager regarding the MEED. The memo transmits additional correspondence received on this item and indicates that prior to the second public hearing on the resolution, the map will be revised by removing property owners and adding property owners who requested same.

Mrs. Dittmer concluded by saying that George Houston, Florida Department of Environmental Protection Brownfields Redevelopment Coordinator is available for questions.

Mr. LaRusso asked if there will be any federal guidelines associated with this program. Mrs. Dittmer replied no and said it will only involve Florida Statutes and state funding.

Mr. LaRusso referenced the Brownfield Site Rehabilitation Agreement, which provides tax credits for Florida corporate income tax. This is obviously good for economic development; however, LLCs and sole proprietorships are also businesses. Mrs. Dittmer replied that if they are not a "C" corporation, it is her understanding that type of company can sell the credits on the market at about an 80% return.

Mr. Schluckebier added that the underlying idea is that they do what is required to obtain the benefit, but that benefit should not be lost merely by virtue of the type of corporation they have. Therefore, there is a secondary market.

Mr. LaRusso referenced information on a flyer distributed by residents, which indicates, "Property values in the MEED will decrease." He asked if the City has seen a decrease in valuation in the community redevelopment areas, which are also termed slum and blight. Mrs. Dittmer replied no and confirmed that valuations in the CRA areas have increased. Mr. LaRusso commented that unfortunately the words "slum" and "blight" are attached to the CRA areas, just as the word "brownfield" will be attached to the MEED.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Mrs. Dittmer confirmed for Mr. LaRusso that the City has two Brownfield Areas – the Starbucks site and the Matt's Tropical Grill site. She added that the valuation of Starbucks has increased and the valuation of Matt's Tropical Grill is expected to increase with the improvements being made on the property.

Mayor Goode opened the public hearing.

Larry Wuensch, representing the Melbourne International Airport, stated that the Melbourne Airport Authority voted to request Council include the Airport property within this area. It is a valuable economic development tool, and Embraer specifically asked to be included within the area for the potential tax credits.

Matt Nugnes and Bud Deffebach, representing Matt's Casbah (previously referred to as Matt's Tropical Grill), were present. Mr. Deffebach explained that they are an LLC and applied for the Brownfield designation. He reported that this is a great program. Additionally, he noted that he believes the flyer that was distributed contains a lot of misinformation. The Brownfield designation is good for property values and incentivizes clean-up.

Mayor Goode closed the public hearing.

Moved by Meehan/LaRusso for approval of Resolution No. 3017. The maker/second confirmed that approval includes revision of the map to remove and add properties as requested by property owners prior to the second public hearing scheduled for September 16, 2008.

Mrs. Corby asked if the City has established an estimate on the concurrency amount that would normally be paid by developers that the City would now have to absorb. Mrs. Dittmer replied that there is no affect on the payment of impact fees based on the designation of the MEED. The only incentives that exist are state level incentives related to assistance with the cost of clean-up and incentives for the creation of jobs. The local government may choose to add an additional \$500 per job to the state's \$2,000 per job incentive for a total of \$2,500. As an example, Embraer received a \$2,000 job incentive from Enterprise Florida. The incentives being discussed do not involve City funding.

In response to Mrs. Corby, Mrs. Dittmer explained that if a business creates 10 new jobs within the MEED and coordinates through Enterprise Florida, which is a state agency, it would qualify for the \$2,000 per job incentive. She added that there is no City funding or waiving of impact fees.

Mrs. Corby asked if there would be anything associated with altering our parking standards, waiving transportation impact fees, or waiving permit fees. Mrs. Dittmer replied no.

Mrs. Corby asked if there is a limit on the State's loan guarantees. Mrs. Dittmer explained that the state is not providing a loan guarantee. The state is providing a tax credit. Mrs. Corby said that is correct. Mrs. Dittmer confirmed that the state does not

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

have an unlimited funding amount. That's why the company has to work through Enterprise Florida.

Mrs. Corby said that this is all based on the potential that the land has contamination. She asked if the City would be responsible for providing the history of the property or if it would be up to the property owner to garner all the information. Mrs. Dittmer replied that the City would not have any involvement. Continuing, Mrs. Dittmer explained that in the process of an assessment, a property owner would hire an environmental consultant to make determinations. Mrs. Corby asked about soil samples. Mrs. Dittmer said that's a private issue. Mrs. Corby replied correct.

Mrs. Corby asked if soil samples return and show potential contamination if the City has a standard on what actions would need to be taken for the contamination to be eliminated. Mrs. Dittmer stated that is the component the Florida Department of Environmental Protection will handle. When a determination is made that there is contamination, the property owner will coordinate with FDEP. Mrs. Corby asked if the City would have any responsibility and Mrs. Dittmer replied not at all.

Mrs. Corby said when this program started in the State of Florida in 1998 the tax credits were about \$149,000. In 2005 the tax credits approached one million dollars. She stated that the money is coming from somewhere and she's concerned that one area with high tax credits would have the potential to poison the well for surrounding areas. She asked if we are encouraging improvement of a particular area or establishing financial stability for the people in the area by providing tax credits.

Mrs. Dittmer replied that we are encouraging people to redevelop property, and we are using it as an economic development tool. A company may choose to locate within the MEED as opposed to a location in another city because they can go through Enterprise Florida for incentives. It's a tool to bring jobs to the City of Melbourne.

Mrs. Corby said she realizes that; however, she is concerned about the small businesses located outside the MEED that do not have access to tax credits. She noted that she would like for us to focus on the entire City and for everybody to have the advantages.

The question was called. The roll call vote was:

Aye: LaRusso, Thomas, Meehan and Goode

Nay: Corby

Motion carried.

19. ORDINANCE NO. 2008-51 (CPA-2008-01), ORDINANCE NO. 2008-52 (CPA-2008-10), AND ORDINANCE NO. 2008-53 (Z-2008-1128AD) OLDE EAU GALLIE RIVERFRONT COMMUNITY REDEVELOPMENT AREA ART DISTRICT OVERLAY: Ordinances providing for Comprehensive Plan Amendments and rezoning on 30.86± acres, located west of Pineapple Avenue, east of Avocado Avenue, north of Creel Street, and south of

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

McClendon Street. (Applicant - Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee and the City of Melbourne) (P&Z Board - 2/21/08)

- a. Ordinance No. 2008-51/CPA-2008-01: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Low Density Residential to Commercial/Low Density Residential on 30.86± acres.
- b. Ordinance No. 2008-52/CPA-2008-10: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment, adding a site-specific policy for Planning Area I, detailing the development restrictions within the overlay zone on 30.86± acres.
- c. Ordinance No. 2008-53/Z-2008-1128AD: (First Reading/Public Hearing) An ordinance changing the zoning from R-2 (One-, Two-, and Multiple-Family Residential) on 4.44± acres and R-2 (6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) on 26.42± acres to C-1 (Neighborhood Commercial).

The City Attorney read each ordinance by title. Mrs. Dittmer reviewed the agenda report.

The Planning and Zoning Board considered the Future Land Use map amendment and the proposed rezoning and voted unanimously to recommend approval. The Eau Gallie CRA Advisory Committee has supported the establishment of the Art Overlay Zone. The ordinances and the added staffing for implementation of the Art District via the CRA/Merchants' Association program, represent a culmination of two years of coordination between the CRA, staff and the affected individuals.

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

Bob Leichtenberg, 882 Wood Creek Drive and property owner on McClendon Street, stated that he is disappointed with the Comprehensive Plan amendment. 50 years ago duplexes were perfectly legal uses; however, they are now considered non-conforming. Property owners have difficulty obtaining financing for non-conforming structures. He asked why he should spend money in the area if he can't rebuild if a structure burns down. Mr. Leichtenberg stated that the idea of an art district is wonderful; however, the area should be changed to medium density residential so the duplexes and triplexes won't be considered non-conforming.

Following brief discussion, Mrs. Dittmer explained that she does not believe that the goal of increasing higher density development is what the Eau Gallie CRA Advisory Committee envisioned for the area. Mr. Schluckebier added that a change of density is not embodied in this proposal. It is an attempt to marry residential and commercial as it relates to art. A density change can't be amended on to this proposal. Mr. Leichtenberg's proposal has merit and should be studied, but this is not the right time or the right instrument.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Discussion continued. Mrs. Dittmer confirmed that the item on this agenda would not hinder a future discussion about density. She added that staff can look at Mr. Leichtenberg's request and return to the CRA Advisory Committee for input.

Moved by LaRusso/Meehan for approval of Ordinance No. 2008-51 based upon the findings contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: LaRusso, Thomas, Corby, Meehan and Goode

Motion carried unanimously.

Moved by Thomas/LaRusso for approval of Ordinance No. 2008-52 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

Moved by LaRusso/Meehan for approval of Ordinance No. 2008-53 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

20. RESOLUTION NO. 3018, STORMWATER UTILITY BUDGET: (Public Hearing) A resolution to adopt an annual stormwater utility budget for the fiscal year beginning October 1, 2008.

Mrs. Lamb provided an overview. Mayor Goode opened the public hearing. There were no comments.

Moved by LaRusso/Meehan for approval of Resolution No. 3018. Motion carried unanimously.

21. RESOLUTION NO. 3019, CERTIFICATION OF STORMWATER ASSESSMENT ROLL: A resolution certifying the Stormwater Utility Assessment Roll.

Mrs. Lamb provided an overview.

Moved by Thomas/LaRusso for approval of Resolution No. 3019. Motion carried unanimously.

22. COUNCIL ACTION RE: Appointment of three regular members and two alternate members to the Historic Preservation Board.

City Clerk Cathy Wysor reported that the Historic Preservation Officer recommended that Diane Barile be reappointed; Yolanda Schofield and Thomas Funk be appointed as regular members (currently serving as alternates); and Jennifer Ann Jackson and David Shriver be appointed as alternate members.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 2008

Moved by LaRusso/Meehan to accept the recommendation of the Historic Preservation officer. Motion carried unanimously.

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Hamilton Boone, 301 Hibiscus Boulevard, stated that a group of citizens (Save our Streets/32901) concerned with crime met and signed a petition asking the City to adopt an ordinance, which would require landlords to stop renting/leasing to those who bring blight, crime and an unsafe environment to the area. He added that the ordinance should have the authority for the City to condemn property. Mr. Boone presented the petition to the City.

Mayor Goode said that the City will take that into consideration.

James Teele, 2442 Empire Avenue, representing the Kingsmill Subdivision, thanked the Streets and Stormwater Division for its quick response during Tropical Storm Fay. He detailed the efforts that were made during the storm. Additionally, Mr. Teele asked that culverts be inspected and increased where necessary to alleviate flooding.

Pat Poole, 805 E. Palmetto Avenue, said that the residents from Trinity Towers East need relief from the alarm that has been going off for a week in the old Baptist Church. The property owner is not local and the City should be able to go in and turn off the alarm.

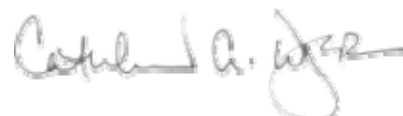
Vice Mayor Kathy Meehan said that the manager of Trinity Towers spoke to her about this issue. Mrs. Meehan said that she talked with the City Manager and staff is going to determine what can be done.

Council Member Mark LaRusso thanked the City Manager for keeping him updated during Tropical Storm Fay.

24. ADJOURNMENT

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

The meeting adjourned at 10:13 p.m.



---

City Clerk – 9/10/2008

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