

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
SEPTEMBER 30, 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 7:10 p.m. p.m. by Mayor Harry C. Goode, Jr.

1. Council Member Cheryl Palmer gave the invocation.
2. The Pledge of Allegiance was recited during the budget public hearing.
3. Roll Call.

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

Prior to the budget public hearing, Mayor Goode announced that Items 8 and 9 are being withdrawn (postponed until a future Council meeting).

4. Proclamations and Presentations

Council Member Mark LaRusso recognized Mayor Goode for entering the general election unopposed. He will serve four more years as Mayor.

5. Approval of Minutes – September 16, 2008 special and regular meeting minutes

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

6. City Manager's Report

**High number of foreclosures/increased Code Enforcement complaints** – Council Member Cheryl Palmer said that this item provides a picture of the problem, but it does not offer a plan or solution. City Manager Jack Schluckebier replied that when homes are vacated utilities are shut off, which results in trash/garbage not being picked up. Staff is working to resolve that issue. Additionally, if staff encounters ongoing issues that can't be addressed, a remediation plan will be provided to Council. The City Manager confirmed for Mrs. Palmer that banks and mortgage companies are treated in the same manner as private property owners. These cases take Code Enforcement personnel additional time because of owner research issues involved with foreclosures.

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City Attorney Paul Gougelman added that the first or second agenda in October will contain recommendations from the City Attorney's Office with regard to foreclosures and Code Enforcement cases.

The City Manager advised Council that the report/estimate from the Bureau of Economic Business Research at the University of Florida – the official population advisor to the Governor for state purposes – brought this to his attention. The official estimate as of April 1 showed more than 300 new occupancies during the previous 12-month period, yet during that same period, the population decreased by 300.

Mrs. Corby reminded everyone of the information she supplied at the last Council meeting. Through the Foreclosure Prevention Act, Florida stands to gain \$400 – \$500 million to help with some of these foreclosures. Funds will be distributed through CDBG programs. Mrs. Corby said she is not suggesting the City enter the real estate business; however, she would like to point out that there are opportunities.

**Crane Creek** – Council Member John Thomas reported that he met with the City Manager about flooding problems in the Crane Creek area following heavy rain. The area has flooded significantly twice in the past 11 or 12 years. Mr. Thomas asked if staff has determined if Crane Creek east of Babcock Street is under the County's jurisdiction. Mr. Schluckebier replied that City Engineer Jenni Lamb will review the details. Mr. Thomas concluded by asking the City to coordinate an effort with the County if it is determined that area is the County's responsibility.

**Annual City board training** – Council Member Mark LaRusso commended City Clerk Cathy Wysor and her team for the training process. He pointed out that based on the evaluations, the training seems to be going well.

**Melbourne/West Melbourne water negotiations** – Mr. LaRusso asked about the meeting held between the two cities yesterday. The City Manager replied that it was an informal meeting because West Melbourne did not properly file the advertisement notice as required by the conflict resolution statute. Once the proper notice is filed, the two parties can hold a formal meeting, which at this point will probably occur towards the end of October.

Following comments he made at the last Council Meeting, Mr. LaRusso said that four West Melbourne Council Members stated publicly that they are against the proposed merger between Melbourne and West Melbourne. Mr. LaRusso stated that is premature, especially since there is no merger proposal. He repeated that he plans to return with viable options and incorporate the help of other Council Members.

Continuing, Mr. LaRusso detailed other comments made by West Melbourne City Council Members. He referenced the erroneous information in the newspaper about "triple taxation" and noted that the Melbourne/West Melbourne tax comparison distributed by City staff shows that it actually costs more to live in West Melbourne.

The Mayor asked Mr. LaRusso to schedule this as an agenda item if he would like to continue discussion. Mr. LaRusso confirmed that he will request a future agenda item to

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discuss viable options.

Mr. Thomas informed Mr. Schluckebier that an idea has been floated, which suggests that he (Schluckebier) had plans all along to merge with West Melbourne. Mr. Schluckebier replied that the City of Melbourne has no such proposal, and he is not aware of any such proposal. He added that Mr. LaRusso has been handling this issue on his own.

***December Council meeting schedule*** – Mayor Goode said if there are no objections, staff will place a resolution on the next agenda canceling the December 23 meeting.

7. Public Comments

Patrick Domkowski, MD, Ph.D., Chief of Medical Staff, Palm Bay Hospital, and Dr. Paul Biggs, 643 Peregrine Drive, Melbourne, informed Council that Health First plans to drop Omni Health Care as one of its health care providers effective October 1. Approximately 15,000 patients in Brevard County will be affected. The doctors elaborated on the impact this will have on their patients. They asked Mayor and Council to exert positive influence on the process so that patients would not be required to seek and find new doctors.

With regard to City of Melbourne employees, Mr. LaRusso said he believes this means Health First is dropping a large percentage of its coverage.

UNFINISHED BUSINESS

8. SITE PLAN APPROVAL (SP-2007-19) PARKWAY PLACE APARTMENTS: (Public Hearing) A request for site plan approval to allow a 216-unit multiple-family apartment project at a density of 14.66 units per acre on a 14.73-acre site zoned R-2 (15) (One-, Two-, and Multiple-Family Medium Density Residential with a cap of 15 units per acre), located on the southeast corner of Parkway Drive and Wickham Road. (Owner - Wickham Park, LLC) (Applicant - The Richman Group of Florida, Inc.) (Representative - Matthew Soyka, Soyka Engineering & Associates, Inc.) (Postponed - 3/25/08)

The Mayor reminded everyone that this item has been postponed until the November 25, 2008 City Council meeting. Discussion followed.

9. ORDINANCE NO. 2008-47, GENERAL EMPLOYEES' PENSION PLAN: (Second Reading/Public Hearing) An ordinance amending Chapter 23 of the City Code, Retirement and Pensions, Article VII, General Employees' and Special Risk Class Employees' Pension Plan, by closing the plan to new members and authorizing the transfer of funds to the Florida Retirement System. (Postponed - 8/12/08)

(Note: Staff requested that action on this ordinance be postponed until November 25 to allow time for the Board actuary to complete the actuarial impact statement, which is required prior to second reading.)

Without objection, the Mayor announced that this item is postponed until the November 25 meeting.

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10. COUNCIL ACTION RE: Denial of a Right-of-way Use Agreement between Melbourne Center, Inc. and the City of Melbourne for a subdivision sign on Technology Drive. (Postponed - 8/12/08)

City Engineer Jenni Lamb stated that this is a right-of-way use agreement for a private monument sign to be located within Technology Drive, which is City right-of-way. Staff does not recommend approval for several reasons (outlined in the agenda backup material). Technology Drive is classified as a collector road and the City has denied similar requests in the past.

Part of the applicant's argument may be that the sign is partially constructed. The sign exists in its current, unfinished state because of a misleading permit application. The permit application lists Melbourne Center as the owner (of the property) and the drawing shows the sign location as an existing Melbourne Center landscape and signage island. Mrs. Lamb stated that is not correct.

Continuing, the City Engineer asked Council to consider how the City obtained this property. Half of the landscape island/right-of-way came from Melbourne Center subdivision and half came from Wuesthoff Hospital. The island straddles property that each party gave. If this agreement is approved, Mrs. Lamb advised that Council will need to determine whether Technology Drive will be classified as a collector road. The City will give transportation impact fee credits for the construction of Technology Drive to be built to collector road standards.

Mrs. Palmer asked if allowing the sign would prohibit the City from making Technology Drive a collector road. Mrs. Lamb replied no; however, it would set a standard in allowing subdivision monument signs in collector road rights-of-way. She added that she firmly believes this is not something the City should allow.

Mrs. Corby asked if the sign was part of the dedication of the land and Mrs. Lamb replied no.

Mrs. Corby asked for additional information on how the building permit was obtained improperly. Mrs. Lamb said that the "owner name" is listed as Melbourne Center and the drawing indicates "existing Melbourne Center landscape and signage island." She added that typically a subdivision will make a landscape island its own tract as part of the platting process. Melbourne Center has received preliminary plat approval. Prior to final plat, they could designate this as a tract, but they would have to go through the abandon and vacate process on the public right-of-way.

Harold Bistline, attorney representing Wuesthoff Hospital, agreed with the City Engineer's presentation. He added that if Wuesthoff had known during the dedication process that Mr. Cochran would be asking to place a monument sign in the middle of the property, they would have provided a reservation in their deed.

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Continuing, Mr. Bistline listed the problems with the application; he stated there is no hardship to justify approving this request; and he elaborated on the events that occurred after Wuesthoff noticed the construction activity. The City instructed Mr. Cochran to stop, but he continued constructing the sign. Mr. Bistline displayed photographs showing the condition of the property when Mr. Cochran was told to stop construction.

Mr. Bistline commented that Mr. Cochran has sufficient land on his property to place a sign, which will promote his private development. Attorney Bistline made a final point – the hospital paid for substantial improvements to Wickham Road, Technology Drive and the traffic light at that intersection. They have a vested interest and respectfully request Council deny the application and require Mr. Cochran to remove the structure.

Mrs. Palmer asked Mr. Bistline to explain what harm this will do to Wuesthoff Hospital. Mr. Bistline replied that Wuesthoff did not dedicate the road and pay for the improvements so Mr. Cochran could advertise his commercial subdivision. If they had known that he had intended to do this, Wuesthoff would have provided against that in the deed. The road allows access to Wuesthoff Hospital. The hospital gave land and paid good money for that purpose.

Mrs. Palmer asked if the road still provides access to Wuesthoff Hospital and Attorney Bistline replied yes.

Mrs. Corby asked Mr. Bistline if his client would consider sharing the sign with Melbourne Center. Attorney Bistline replied that no one has ever asked that question; therefore, he can't speak for his client. He added that Wuesthoff has signs that are permitted, paid for and installed.

Mrs. Corby asked if there are future plans for the road to extend farther than Wuesthoff Hospital. Mr. Bistline replied that the terminus of the road will be in the City of West Melbourne. Mrs. Lamb clarified that Technology Drive is considered a collector road because in the future the plan is for it to extend to Ellis Road.

Mr. Contreras asked how many entrances Wuesthoff has off of Wickham Road. Mr. Bistline replied three. (See clarification below.)

In response to Mr. LaRusso, Mrs. Lamb said that the City agreed to classify Technology Drive as a collector road because it will provide relief to the Wickham/Ellis intersection. She confirmed that impact fee credits would not be available if the road was not designated as a collector road.

Mr. Bistline clarified that the hospital has two access points off of Wickham Road. Technology Drive provides access as a public collector road. Their north access on Wickham Road is primarily for ambulance traffic; it's not really used by the public. He added that they needed access to their campus off of Technology Drive, but they didn't need it to go all the way to Ellis Road.

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In response to Mr. Contreras, Mr. Bistline agreed that the northerly access is not strictly limited to ambulance traffic. Discussion continued.

Mrs. Lamb noted that the dedication of Wuesthoff's portion of Technology Drive and the construction of Technology Drive were conditions of their site plan approval.

Mr. Contreras asked if it boils down to the cost – Wuesthoff paid for all those improvements and they don't want to share. Mr. Bistline replied no and said their opposition relates to the process, the application, false information, the applicant continuing to build when ordered to stop, etc.

Philip Nohrr, attorney representing Robert Cochran, applicant, stated that they don't need Technology Drive to be a collector road, it wasn't their idea for it to be a collector road and they publicly renounce any rights and impact fees to that being a collector road. He asked for those two impediments to be removed from this process.

Continuing, he explained that Melbourne Center is a large, industrial commercial project that at its build-out will be about 700,000 s.f. The ultimate plan is for it to run from Ellis Road and exit Technology Drive onto Wickham Road. It is their belief that the hospital was able to get the signal at Technology/Wickham because Melbourne Center, at its build-out, will have the warrants required for the light. The light is fairly valuable and part of what was bargained for. Regarding the cost of the light, cost of the road and construction of the road, Wuesthoff paid its fair share and his client paid his fair share. Any indication that Wuesthoff paid for that light is only partially correct; they paid for a portion. Attorney Nohrr stressed that the light is critical. Wuesthoff wanted the light and his client wanted the light as well.

Continuing, Attorney Nohrr discussed the construction of the roadway and stated that they could stop the road and add a cul-de-sac, although they don't believe that is good planning. Regarding the sign, the island was constructed with conduit. The roadway was dedicated in 2006. At that time, his client was talking to City staff about the need for a sign. The City responded that the dedication needed to occur first. It should be no surprise that his client intended to place a sign on the island.

Mr. Nohrr discussed the sign application process and said Melbourne Center listed itself as the "owner of the sign". They were not suggesting that they own the road. It didn't dawn on them that anyone would suspect that because they deeded property for half of the road. Mr. Nohrr asked Council not to deny what his client may otherwise be entitled to because he somehow acted in bad faith – that just simply is not the case.

Discussion continued.

Mr. Nohrr pointed out that if they moved their sign to the south, they would be competing with the business that owns or rents that parcel from Mr. Cochran. They need this to be a good project with great signage everyone can be proud of. Mr. Nohrr asked Council to recognize that his client has been open and above board. The sign was being constructed for a period of time and then all of a sudden Wuesthoff decided to object.

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Mrs. Palmer asked if Mr. Cochran intends to build and dedicate the remainder of the roadway. Mr. Nohrr replied yes. Mrs. Palmer asked if he intends to place an island sign at the Ellis Road entrance. Mr. Nohrr explained that ideally the subject sign would have a “cousin” on Ellis Road.

In response to Mr. LaRusso, Attorney Nohrr said that in retrospect they should have applied for a right-of-way use agreement.

Mr. Nohrr confirmed for Mr. Contreras that it is his understanding that the light was not possible without the Melbourne Center development.

Mr. Bistline disagreed and stated that Wuesthoff was required by the City to get the light. They worked with the County to get the warrants. He confirmed for the Mayor that it’s his understanding that Wuesthoff paid the entire cost for the light.

Mrs. Lamb announced that it is her understanding there was an agreement between Cochran and Wuesthoff; it was a joint venture.

Mrs. Corby asked who would be responsible for the maintenance of a sign on City right-of-way. Mr. Nohrr replied that when all the documentation is done, his client would be responsible for the maintenance of the sign.

In response to Mr. Thomas, Mr. Nohrr provided his definition of “dedication.”

Discussion continued.

Mrs. Corby asked if there would be willingness to share the sign. She noted that it sounds like there is a battle for identity. Mr. Nohrr responded that at this point, his client would like the sign. And, it doesn’t sound like there is enthusiasm on Wuesthoff’s part to be part of that venture.

Mr. Thomas asked how many other City owned island/medians contain private business signs. Mrs. Lamb replied that there are a few throughout the City with the older developments. She added that in her opinion, it sets a precedent for the City to start allowing monument signs on collector roads.

Moved by Palmer/Meehan to approve.

Mrs. Palmer stated the City desperately needs that collector road to relieve pressure on Wickham Road. Mayor Goode pointed out that today it is not an issue because the road is not a through road. He asked the applicant if he would be agreeable to removing the sign if the road isn’t constructed in “X” years. Mrs. Palmer declared that she wants absolute assurance that the City will have this road.

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Mrs. Corby said that currently the road goes to nowhere and the project is not in place. The Melbourne Center sign is misleading because it sits on the south side of Wuesthoff Hospital. Mrs. Corby asked when the development will be built.

Attorney Nohrr said it will be a 10-year project because of its size. The development is market driven and once the current economic situation changes, the project will start moving.

In response to Mrs. Palmer, Mrs. Lamb explained that transportation impact fees are paid at the time of building permit. Mr. Cochran has no building; therefore, the credits haven't been issued yet.

At the request of Mr. Gougelman, the maker/seconder clarified that the motion is to approve the license agreement in the agenda package.

(Note: Section 12 of the license agreement provides that the term of the agreement is for 10 years and commences on the effective date of the agreement and terminates on December 31, 2018.)

Mr. Contreras stated that Wuesthoff's patients and staff enjoy the traffic signal at that intersection. Also, in the future the benefit of the roadway will extend to all the citizens. He added that is primarily the reason he intends to support the motion.

Mrs. Palmer asked if the license agreement will include the provision that Mr. Cochran will connect Technology Drive to Ellis Road. Mayor Goode said that is not his understanding.

Attorney Gougelman explained that Mr. Nohrr volunteered his client's right would be good for 10 years, which is consistent with the agreement. The agreement grants a license to place the sign for 10 years and then it expires. If Council wants the applicant to volunteer to build the road within 10 years as a condition of the agreement, the applicant needs to provide further indication.

Mayor Goode said that the City can't do that. Mrs. Meehan asked why that can't be added as a condition. Mayor Goode said he doesn't believe the free enterprise system allows Council to tell the applicant how long he has to construct a multi-million dollar road. At this point, the Mayor said that Mrs. Meehan has asked for a condition from the applicant that the road will be constructed within 10 years. Mr. Nohrr replied yes.

Mr. Gougelman stated that the agreement will contain a condition that the applicant will build the road within the next 10 years. The "road" will be defined as a paved two-lane wide corridor open to the general public that goes connects with Ellis Road.

The maker/seconder agreed. The question was called on the motion, as clarified, including the condition related to construction of the road. The roll call vote was:

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

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Nay: Thomas

Motion carried.

Recessed: 8:47 p.m.  
Reconvened: 8:54 p.m.

NEW BUSINESS

11. COUNCIL ACTION RE: Amendment No. 8 to the contract for professional services for the preparation of a five-year compliance report as required by the Consumptive Use Permit No. 50301, Project No. C03303, Reiss Environmental, Inc. (also known as Reiss Engineering, Inc.), Orlando, FL - \$109,000.

Assistant Public Works and Utilities Director Harold Nantz was available for questions.

Moved by Contreras/LaRusso for approval of Amendment No. 8 to Reiss Environmental, Inc. in the amount of \$109,000 for the preparation and submittal of a Five-Year Compliance Report to the SJRWMD as required by Consumptive Use Permit No. 50301. Motion carried unanimously.

12. COUNCIL ACTION RE: Contract award for Windward Drive Drainage Improvements, Project No. 20208, MASCI Corporation, Port Orange, FL - \$60,886.50; and transfer of \$67,000 from the Tallwood Subdivision Drainage Project (No. 20104) to establish this project budget.

Mrs. Lamb explained that the contract is for the construction of rear yard drainage inlets and piping to provide a positive stormwater outfall for the houses located on the north side of Windward Drive east of Commodore Drive. This project will alleviate severe backyard flooding that occurs during most medium to major rain events. Currently City crews assist by using pumps to remove the water. She noted that the yards flooded prior to Tropical Storm Fay.

Moved by LaRusso/Meehan for approval of the construction contract with MASCI Corporation in the amount of \$60,886.50 for the Windward Drive Drainage Improvements, Project No. 20208 and a budget transfer of \$67,000 from the Tallwood Subdivision Drainage Project (20104) to establish this project budget. Motion carried unanimously.

13. COUNCIL ACTION RE: Acceptance of the selection committee's recommendation for the Consultant's Contract for Professional Engineering Services for the Water System Master Plan Update, Project No. 35107; and authorization for staff to negotiate a contract with Reiss Engineering, Inc., Orlando, FL.

There were no questions for the City Engineer.

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Moved by Meehan/Thomas for approval of the selection committee’s recommendation of Reiss Engineering, Inc. to provide professional engineering services and authorization for staff to negotiate a contract with Reiss Engineering, Inc. for professional engineering services for the Water System Master Plan Update. Motion carried unanimously.

14. COUNCIL ACTION RE: Approval of Supplements to the Continuing Consultant’s Contract for engineering services for surveying, design, and permitting of three projects associated with a grant award from the United States Department of Agriculture Natural Resources Conservation Service Emergency Watershed Protection Program in the amount of \$2,750,000.
- a. Supplement No. F041 to the Continuing Consultant’s Contract for engineering services for surveying, design, and permitting through the St. Johns River Water Management District, and construction services for the Dartmouth Ditch at Country Club Road Culvert Replacement, Project No. 20206, Frazier Engineering, Inc., Melbourne, FL - \$20,750.
  - b. Supplement No. F042 to the Continuing Consultant’s Contract for engineering services for surveying, design, and permitting through the St. Johns River Water Management District, and construction services for the Edgewood Ditch Erosion Control, Project No. 20009, Frazier Engineering, Inc., Melbourne, FL - \$57,400; transfer of \$26,288 from Miscellaneous Stormwater Project No. 20099; and an appropriation of \$31,112 from the Stormwater Utility Fund to establish this project budget.
  - c. Supplement No. F043 to the Continuing Consultant’s Contract for engineering services for surveying, design, and permitting through the St. Johns River Water Management District, and construction services for the North-South Terminal Canal, Project No. 20103, Frazier Engineering, Inc., Melbourne, FL - \$49,500.

Moved by Thomas/Palmer for approval (of Items “a”, “b” and “c” as recommended in the agenda package).

Mrs. Lamb responded to general questions about the projects.

The question was called. Motion carried unanimously.

15. CONSENT AGENDA:

Moved by Meehan/Contreras for approval of the consent agenda. Motion carried unanimously.

- a. Task Order No. 9a to Amendment No. 9 of the agreement for additional geotechnical services for Grant Street Water Reclamation Facility Reuse Improvements, Phase III, Project No. 31108, Hazen & Sawyer, P.C., Fort Fierce, FL - \$13,700; and transfer of \$13,700 from Water & Sewer Miscellaneous Capital Improvements to supplement this project budget.

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- b. Purchase of two 125 hp vertical turbine pumps and motors for Water Production, Afton Pumps, Inc., Houston, TX - \$228,999.
- c. Purchase of a Kruger Model 2.5RO91 sand pump for Water Production, I. Kruger, Inc., Cary, NC - \$18,928.28.
- d. Approval of a continued financial commitment for 2009 to the Melbourne International Airport in the amount of \$100,000 in support of a grant from the Small Community Air Service Development Program, U.S. Department of Transportation for service expansion to the Airport.
- e. Approval of the Second Amendment to the Interlocal Agreement for Creation of the Space Coast Transportation Planning Organization formerly known as the Brevard Metropolitan Planning Organization and authorization for the City Manager to execute the agreement.
- f. Approval of an amendment to Section 10.13 of the Personnel Policies and Procedures with regard to the Step Pay Plan.
- g. Authorization for the City Manager to submit a Request for Public Assistance to the Federal Emergency Management Agency for grant funding through the Department of Homeland Security to resolve drainage problems at the D. B. Lee Water Reclamation Facility; and authorization for the City Manager to execute any related grant documents.
- h. Resolution No. 3026: A resolution providing for an adjustment in solid waste services rates based on a 5% maximum change in the Consumer Price Index as authorized by Section 14-46 (d) of the City Code.
- i. Resolution No. 3027: A resolution authorizing the City Manager to submit a grant application to the Florida Department of Environmental Protection for grant funding in the amount of \$1,200,000 through the Total Maximum Daily Load Water Quality Restoration Grant Program for south Sarno Road drainage area improvements.

16. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

17. ORDINANCE NO. 2008-54 (AR-2008-225) TRIMBLE ROAD AREA ANNEXATION: (First Reading/Public Hearing) An ordinance providing for a special mail ballot annexation referendum to be held on December 16, 2008; providing for the annexation of 57.04± acres, located north of Eau Gallie Boulevard, south of Aurora Road, and west of Wickham Road, along Trimble Road, Miller Lane, Cobb Lane, Easy Street, and Baker Street.

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Attorney Gougelman read Ordinance No. 2008-54 by title. Mrs. Dittmer reviewed the agenda report.

Philip Kinder, 1440 Cobb Lane, said that he moved here for the advantages of living in the County. Most of the homes in this area are on one-acre tracts. Mr. Kinder stated that he doesn't like the idea that the entire neighborhood hasn't been consulted. He's quite satisfied with County services and encouraged Council to vote no.

Roy Raithel, 965 Cobb Lane, said that he is totally opposed to the annexation and City services in the area. The neighborhood was built in the early 1960s. He commented that he believes there are problems with the map because it contains areas with no connectivity to a Melbourne waterline. Mr. Raithel referenced the neighborhood meeting, which had a sign in log. At that meeting, it was determined there were enough residents who wanted services. He stated that he believes the log was flawed, although it's hearsay and nothing he can prove.

Continuing, Mr. Raithel reported that Trimble Road is under water every time there is a large rainfall event. He said that he believes this could contaminate the waterlines. Mr. Raithel concluded by saying with no connectivity, water will settle at the end of the lines and won't meet EPA standards unless the lines are flushed. He asked Council to protect the rights of the citizens in this area.

With regard to the map, Mrs. Dittmer confirmed for Mr. LaRusso that the City tries to accommodate the people who are truly asking for services. Where possible, people are left out who don't have an interest. With regard to this process, staff began with a letter survey, followed up with a public meeting, and received additional calls and correspondence. All of that led to the proposed boundary provided in the agenda package. Mr. LaRusso said that the majority of the people who have responded positively are the ones in the shaded area. Mrs. Dittmer agreed and added that there are people in the proposed area who do not want to have City services.

Mrs. Dittmer informed Council that the waterlines won't dead-end. She displayed on the map where the waterlines will run. Additionally, she said she doesn't believe there will be any problems with our waterlines being underground if the roadway is flooded.

Mrs. Meehan asked how many people signed up. Mrs. Dittmer replied that approximately 40 – 50 people attended the meeting.

Mr. Schluckebier commented that staff received communications in both directions. Based on that, the Planning Department put together the best proposal possible for people in the area who predominantly indicated a desire to move forward. They have an opportunity, which is set out under state law subject to Council's approval, to vote on joining the City.

Moved by Palmer/Corby to deny Ordinance No. 2008-54.

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Mrs. Corby informed Council that she attended the neighborhood meeting and approximately 50 people attended. She said that for the most part staff did a nice job of presenting information; however, in the future she recommended that staff poll the people in attendance to determine who is in favor and who is opposed.

Continuing, Mrs. Corby displayed a map that was distributed during that meeting. The outline of the map has been re-worked – although she's not insinuating that staff hasn't communicated that. She said that her point is this area is the first phase of a larger area. Mrs. Corby questioned why the City is doing this piecemeal when it would probably make more sense and be less expensive to have one vote for the entire area.

Additionally, Mrs. Corby said that Council has the power to change the portion of the Code that requires property to be in the City before receiving water. This would enable the residents in this area to buy water without being part of the City. And, there is a mutual aid agreement for fire and police for this area; therefore, residents are already receiving police and fire service. Mrs. Corby concluded by saying she would love for the area to come into the City, but it's not her place to dictate to the citizens.

Mrs. Corby asked the cost of the mail ballot election and the City Manager replied approximately \$2,500.

Mrs. Corby referenced the map and said that it was probably changed to exclude residents who are not interested in annexing. She pointed out that cutting a street in half would result in one neighbor being in the County and the other neighbor being in the City; this will add to the confusion. Additionally, she informed Council that the six acres of right of way included in this area will become the City's responsibility to maintain.

Mrs. Palmer stated that she has been opposed to this type of annexation from the beginning; it is a form of forced annexation. The vote has nothing to do with the amount of property a person owns. A small lot subdivision has the ability to outvote people who have one-acre or five-acre lots. Mrs. Palmer referenced the map displayed by Mrs. Corby and stated that the area has been cut up to gerrymander the vote.

Discussion followed regarding the differences in the map distributed at the neighborhood meeting and the map contained in the agenda package. Mrs. Corby asked if there is a reason a vote can't be held for the entire area.

The City Manager explained that typically these are done in a way to allow an identifiable group to effect their interest in joining the City.

Discussion followed.

The question was called. The roll call vote was:

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

Motion carried unanimously.

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18. ORDINANCE NO. 2008-55 (A&V No. 319): (First Reading/Public Hearing) An ordinance vacating the southern five feet of an existing 10-foot wide public utility and drainage easement at 4360 Gamwell Drive. (Applicant - James & Laura Missale)

The City Attorney read the ordinance by title. The City Engineer was available for questions. The public hearing was opened and closed with no comments.

Moved by Contreras/LaRusso for approval of Ordinance No. 2008-55. Motion carried unanimously.

19. ORDINANCE NO. 2008-56 (CU-2008-03/SP-2008-07) OMNI CANCER CENTER: (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a building height of 60 feet for the development of a medical office building/parking garage on a 1.94±-acre parcel zoned C-1 (Neighborhood Commercial), located on the southeast corner of Apollo Boulevard and Hibiscus Boulevard. (Owner - Hibiscus Pine LLC) (Applicant/Representative - Dave T. Menzel) (P&Z Board - 9/04/08)

Mr. Gougelman read the ordinance by title and Mrs. Dittmer summarized the agenda report. The Planning and Zoning Board voted unanimously to recommend approval at its September 4, 2008 meeting.

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

Ryan Rusnak informed Council that he is representing the property owner to the south, Dr. Joseph Chanda, 207 Silver Palm Avenue. Mr. Rusnak referenced the packet of information he distributed outlining the reasons Dr. Chanda is opposed to the additional building height. The request is for over 51,000 square feet of medical office on a less than two-acre site. This compels the creation of a parking garage and additional building height.

Mr. Rusnak described the surrounding area and said that the hospital is over 40 feet; however, there is a distinction between the area north of Hibiscus Boulevard and south of Hibiscus Boulevard. Hibiscus Boulevard acts as a boundary. The area south is not as intensively developed and it has more residential development. Mr. Rusnak reported that he canvassed the entire area and didn't find a building over 40 feet. The area streets have a residential feel. They are shown on the site plan as having 40-foot rights-of-way. He said that he measured the sidewalks along Silver Palm Avenue and Apollo Boulevard and determined they are only four feet in width.

Mr. Rusnak acknowledged that the property is zoned C-1 and it's in the Babcock Community Redevelopment Area. It has a bundle of development rights that he's not going to ignore; however, the Future Land Use Element provides for the following: Building heights exceeding 40 feet may be considered in the area around the hospital and within the Babcock Street CRA as long as the development is compatible with the area.

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At this point, Mr. Rusnak displayed a photo taken from the intersection of Apollo looking east on Silver Palm Avenue. The photograph shows the pre-development conditions. Next, he displayed a photo/rendering that was created to show what a 60-foot building on this property would look like. Dr. Chanda's front door/reception area would have a direct view of a 60-foot high parking garage. Mr. Rusnak discussed traffic circulation and said it will be forced to the residential area. He questioned one of the conditions and asked how landscaping will hide the visibility of this structure from adjacent streets.

In closing, he encouraged Council to deny the request. The intensity of the development proposal is not compatible with the surrounding area, or consistent with the character of the area. The request fails to achieve consistency with the Comprehensive Plan and the strict criteria in the Land Development Regulations for conditional uses.

Mr. LaRusso asked Mr. Rusnak if he prepared a rendition showing what a 40-foot building would look like on this site. Mr. Rusnak replied no because it's permitted by Code. Mr. LaRusso said it would have been nice to see the comparison between the two because the argument seems to relate to the direct impact from Dr. Chanda's front door.

Dave Menzel, applicant, explained that the project is going to be a state of the art cancer care center. This will be an expansion of the OMNI Healthcare system. Contrary to what Mr. Rusnak said, OMNI Healthcare has a conditional use for height located three buildings to the north on Apollo Boulevard. Therefore, there is compatibility in the neighborhood, and it's with the same owners.

Mr. Menzel displayed Mr. Rusnak's rendering and stated that the building will not be constructed to the street. There will be a 40-foot setback and after 40 feet of height, the setbacks become more intense. If they lowered the building to 40 feet they could make it wider and much more obtrusive. Mr. Menzel stated that they have met all the Code requirements. The parking garage will be shielded to look like the building. He concluded by saying it will be a nice facility when it's complete.

Mr. Menzel responded to general questions about the rendering that was displayed earlier. A brief discussion followed.

Mayor Goode closed the public hearing.

Moved by Meehan/Thomas for approval of Ordinance No. 2008-56, based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

20. ORDINANCE NO. 2008-57 (CU-2008-05/SP-2008-09) PRITCHETT METAL PACKAGING CENTER (863 WASHBURN ROAD): (First Reading/Public Hearing) An ordinance granting a conditional use with site plan approval to allow a metal packaging center on a 1.92±-acre parcel zoned M-1 (Light Industrial), located on the southeast corner of Sarno Road and Washburn Road. (Owner/Applicant - Joseph Pritchett) (Representative - Matthew Soyka, Soyka Engineering & Associates, Inc.) (P&Z Board - 9/04/08)

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The City Attorney read Ordinance No. 2008-57 by title. Mrs. Dittmer reviewed the agenda report and located the property on the map. The Planning and Zoning Board voted unanimously to recommend approval at its September 4, 2008 meeting.

Mrs. Palmer asked why this business is already in operation. Mrs. Dittmer explained that the applicant is only collecting materials within the building. He's not allowed to have any outdoor activities and has signed a letter acknowledging that he won't be licensed for a packaging facility if this request is denied.

Mrs. Palmer asked what will change with the operation if the conditional use is granted. Mrs. Dittmer replied that the business will receive materials by trucks. The material will be weighed, processed, taken into the interior of the building, and put into a baling machine. The final process involves the creation of two-foot by three-foot cubes of recycled material being removed from the facility.

Mrs. Palmer asked if this conditional use will allow the business to recycle or crush automobiles. Mrs. Dittmer said that the applicant has not mentioned that; however, there is nothing in the ordinance that would prohibit this activity. Mrs. Palmer pointed out that the processing/crushing of cars has a totally different impact. She asked if there is a conditional use that would allow metal recycling but prohibit the recycling of automobiles. Mrs. Dittmer replied that could be a condition of the ordinance. Mrs. Palmer stated that she has done some research and found that recycling automobiles is an intense, loud heavy impact type of business.

Mayor Goode called for disclosures. Mrs. Palmer said she received a call from the applicant's attorney about three months ago. He informed her that the applicant was related to one of her opponents in the County commission race.

Mayor Goode opened the public hearing.

Michael Horne, Soyka Engineering, informed Council that they designed the project and construction plans. He said that he would address design questions and the applicant will address operational questions.

Mr. Horne explained that this is an existing building. The parking area will be striped and brought up to City Code. There will be an opaque fence along Sarno Road. A variance will be required to place the fence on the property line. Currently it is shown 10 feet off the property line on Sarno Road; however, a swale is located there. The scale will be located on the south side of the building and they will install a nice landscape buffer.

Tamara Pritchett, applicant, informed Council that they are not licensed for a baler. Additionally, they don't have the equipment to crush or recycle cars. If they did that in the future, the cars would have to arrive in pieces. Ms. Pritchett explained that they do not shred or recycle metal on site; they are a transfer facility. They take the material in, weigh it, pay it, load it and transfer it out. There is no cutting or grinding of large items.

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Mrs. Palmer asked Ms. Pritchett if she would object to Council removing that provision from the conditional use. Ms. Pritchett replied that she would not object because they are not going to be taking in whole cars.

The Mayor closed the public hearing.

Attorney Gougelman proposed a new condition in Section 2: “No crushing or shredding of motor vehicles or similar sized objects shall be permitted on site.”

Moved by Palmer/Meehan for approval of Ordinance No. 2008-57, based upon the findings and conditions contained in the Planning and Zoning Board memorandum, and the additional condition as read by the City Attorney. Motion carried unanimously.

21. ORDINANCE NO. 2008-58 (AR-2008-226), ORDINANCE NO. 2008-59 (CPA-2008-08AD), AND ORDINANCE NO. 2008-60 (Z-2008-1139AD) SPETKO MINI-WAREHOUSES: Ordinances providing for annexation, a Comprehensive Plan Amendment, and establishing zoning on 1.71± acres, located on the south side of Ellis Road, east of John Rodes Boulevard, and west of Stan Drive. (Owner – Intercontinental Trade & Management Associates, Inc.) (Applicant – Mike Spetko/City of Melbourne) (Representative – Noel Droor, P.E.) (P&Z Board – 9/04/08)
- a. Ordinance No. 2008-58/AR-2008-226: (First Reading/Public Hearing) An ordinance providing for annexation of 1.71± acres and the adjacent 1.18±-acre right-of-way.
  - b. Ordinance No. 2008-59/CPA-2008-08AD: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment; establishing a Future Land Use of Commercial/Industrial on 1.71± acres.
  - c. Ordinance No. 2008-60/Z-2008-1139AD: (First Reading/Public Hearing) An ordinance establishing an M-1 (Light Industrial) zoning district on 1.71± acres.

Attorney Gougelman read the ordinances by title and Mrs. Dittmer briefed Council. The Planning and Zoning Board voted unanimously to recommend approval at its September 4, 2008 meeting. There were no disclosures by Council and no comments from the public.

Moved by Contreras/LaRusso for approval of Ordinance No. 2008-58 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

Moved by LaRusso/Thomas for approval of Ordinance No. 2008-59 based upon the findings contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

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Moved by Thomas/LaRusso for approval of Ordinance No. 2008-60 based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

22. COUNCIL DISCUSSION/ACTION RE: Review of City Council policies. (Requested by Council - 2/12/08)

Council reviewed and made no changes to the following policies:

51. Paving of dirt streets: Seventy percent of the (total number of) property owners will be required to approve the special assessment; the City will contribute 60% towards the cost of paving; and the cost to property owners for sewer extension would be no more than \$20 per front foot. (1/23/2007, Item #20)
52. Annual board reports shall be placed first on the agenda (as Item 7.1). (3/27/2007, Item 19)

From the agenda report: *Now that all the policies have been reviewed, the following will occur in the next six to eight weeks:*

- *Policies that were amended during the review process will return to Council for final approval of the new language.*
- *Policies that relate to “rules of procedure” will be placed in resolution format for Council’s consideration. This would be consistent with Section 2-24, City Code (rules of debate; rules of order).*

*Early in the review process, Council agreed that the adoption of a new policy should require at least a one meeting delay. Previously, policies have been developed “on the fly.” A one meeting delay would allow time for policy language to be properly crafted. Staff will include this new provision in the rules of procedure resolution.*

- *The remaining policies that relate to general administration will be renumbered and distributed.*

23. COUNCIL ACTION RE: Board appointments.

- a. **Resolution No. 3028:** A resolution providing for the appointment of one member (bank/mortgage banking industry seat) to the Affordable Housing Advisory Committee with an amendment to include the name and term of the member appointed.

Mrs. Palmer nominated Bill Levy. Moved by Corby/Palmer to close the nominations. Motion carried unanimously. Moved by Goode/Palmer to appoint Bill Levy. Motion carried unanimously.

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Moved by Meehan/Corby for approval of Resolution No. 3028 with a revision to include Bill Levy's name and term (September 30, 2008 through May 12, 2013). Motion carried unanimously.

**b. Appointment of two regular members to the Citizens' Advisory Board.**

Moved by LaRusso/Thomas to reappoint Yvonne Minus. Motion carried unanimously. (November 12, 2008 – November 11, 2011)

Moved by LaRusso/Corby to appoint first alternate Meshallie Jaeger as a regular member (September 30, 2008 – November 11, 2010; unexpired three-year term) and move Eva Mills into the first alternate position. Motion carried unanimously.

Vice Mayor Meehan nominated Catherine Halverson for the alternate member vacancy. There were no objections to closing the nominations. Moved by Palmer/LaRusso to appoint Catherine Halverson. Motion carried unanimously. (September 30, 2008 – November 11, 2009; unexpired three-year term)

24. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

James Teele, Chairman, Code Enforcement Board, informed Council that one of the board's regular members has been absent for six months. He reported that the Code Board voted to remove that member and move the first alternate up as a regular member.

The City Clerk informed Mr. Teele that Council can't simply remove the member. At this point, the City Clerk will secure a resignation and process the vacancy on a future City Council agenda.

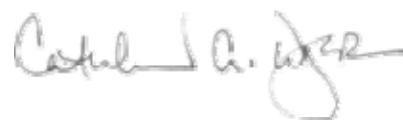
Mayor Goode inquired about attendance standards. Mrs. Wysor explained that the City Code provides that after a member misses three consecutive meetings or any three of five meetings, the chairman is supposed to notify either the City Council or City Clerk.

A brief discussion followed.

25. ADJOURNMENT

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

The meeting adjourned at 10:14 p.m.



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City Clerk – 10/9/2008

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