

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 14, 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. p.m. by Mayor Harry C. Goode, Jr.

1. Council Member Richard Contreras gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

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

4. Proclamations and Presentations

Mayor Goode read and presented the following:

A Certificate of Commendation to Brianna Hutchinson, recognizing her involvement and dedication to our community by providing 400+ hours of volunteer service to Habitat for Humanity of Brevard County, Inc.

A proclamation to Sue Fallon, Conservation Coordinator, Melbourne Woman's Club, declaring October as "Energy Awareness Month."

(Additionally, the Beautification and Environmental Advisory Committee selected Hippo Roofing and Construction, Inc., 1555 N. Harbor City Boulevard, for the "We Noticed Award." A representative from Hippo Roofing was not able to attend the meeting.)

5. Approval of Minutes – September 30, 2008 special meeting minutes and regular meeting minutes

Moved by LaRusso/Contreras for approval of the September 30, 2008 special meeting minutes and the September 30, 2008 regular meeting minutes.

Mrs. Corby referenced the regular meeting minutes, Item #8, where Site Plan SP-2007-19 for Parkway Place Apartments was postponed until November 25. She asked why the site plan appears on this (October 14) agenda.

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Planning and Economic Development Director Cindy Dittmer explained that SP-2007-19 postponed at the last meeting relates to a 216-unit multi-family development. Site Plan SP-2008-08 on this agenda is the mixed-use commercial/residential proposal. Mrs. Dittmer confirmed that the City Code doesn't prohibit a property from having more than one site plan.

The question was called. Motion carried unanimously.

6. City Manager's Report

No additions/no discussion.

7. Public Comments

George Kanazeh, 1880 Trimble Road, referenced the Trimble Road annexation (Ordinance No. 2008-54) that was denied at the last meeting. He told Council that he was at that meeting; however, he had to leave because of a family emergency. Mr. Kanazeh informed Council that two people spoke against the ordinance; however, 67% of the people who attended the neighborhood meeting at the church signed in support of the annexation. This is in spite of four addresses being counted twice as a "no" because the husband and wife at each address signed "no." Mr. Kanazeh stressed that they really need City water in this area. He urged Council to reconsider the ordinance.

Mrs. Corby asked if the special election would involve one vote per household. City Manager Jack Schluckebier explained that the number of registered voters from the affected area who vote in the election will determine the outcome. If a husband and wife at the same address are registered to vote, they would each get one vote.

Mayor Goode said his understanding is that the ordinance had time constraints and it is too late to adopt it in its current form. He asked staff to comment on the next eligible election date if Council decided to reconsider this item.

City Clerk Cathy Wysor replied that the interim Supervisor of Elections provided the election date of December 16. The ordinance that was denied was deadline driven and very specific to an election date of December 16. That ordinance is dead and the opportunity to resurrect that ordinance is gone. If Council so directed, Mrs. Wysor said she would contact the new Supervisor of Elections following the general election to discuss a new election date in 2009.

Ann Watson, 1746 Trimble Road, referenced the Trimble Road annexation, which would have allowed the residents to obtain City services. Ms. Watson explained that the residents received a letter indicating there would be two public hearings – September 30 and October 14. The residents understood that if they could not attend the meeting on September 30, they could attend on October 14 and have an opportunity to be heard. She added that the residents were in shock when they found out that Council had voted to deny the referendum.

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Continuing, Ms. Watson said she would like for Council to know how important this issue is for the majority of affected property owners who would like to have services. They worked with staff for over a year on a process that began with petitions, emails, phone calls, meetings, etc. She concluded by asking Council to reconsider the proposed referendum.

Mayor Goode clarified that Council could not reconsider the previous ordinance because of time constraints; however, a new ordinance could be prepared. He added that the only two people who spoke were in opposition. Based on that, Council voted to deny the ordinance.

Mr. Schluckebier stated that the point about the letter is well taken. With regard to future communications, City staff will stress the importance of attending the first public hearing.

Mrs. Corby asked Ms. Watson what services she was referring to in her comments. Ms. Watson replied City water.

Mrs. Corby asked if the City has an auto aid agreement or mutual aid agreement for fire and police in this area. The City Manager replied that Melbourne may provide some fire services in trade with the County; however, the City would not typically provide police services except under a mutual aid agreement.

Gerald Head, 2597 Bernice Court, representing the Unity Church, referenced the Trimble Road annexation. He informed Council that it was disheartening to go through a process with a documented number of people who agreed to the election and have the item killed simply because two people objected.

Mr. Head asked Council to readdress this issue in the near future. He noted that their concern is as much for City water as it is for police and fire protection. He discussed County response times versus City response times and added that the City water system would provide for fire protection. Currently, if the County responds to a fire in the area, they have water as long as the tanker truck has water.

Mr. Head referenced the letter sent to area residents and pointed out that it doesn't indicate residents have to attend both meetings to voice an opinion. He concluded by saying that if approved, water service would occur one to one and one-half years in the future. However, they would benefit immediately from fire, police, emergency services protection and lower fire insurance rates.

Council Member Cheryl Palmer said that she based her vote on the fact that not everyone wants to be in the City. She informed the audience that Council had a map at the last meeting, which showed properties whose owners are in support. Council took into account the people who attended neighborhood meetings and voiced support, whether or not they attended the Council meeting.

Mr. Head said that the purpose of the ordinance was to decide whether or not to have a vote; therefore, the people who support the item weren't counted because the election was killed.

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Mrs. Corby referenced fire and police protection and asked if staff can determine if this area is covered by auto aid or similar agreements. Mr. Schluckebier replied that we do not have an agreement in place for police. With respect to fire, staff will determine that before the issue returns.

A brief discussion continued.

Council Member John Thomas and Vice Mayor Kathy Meehan expressed support for returning this issue to Council.

Moved by Meehan/Thomas to bring this item back as a new ordinance with a date specific.

The Mayor asked the City Clerk when this item could return. Mrs. Wysor said she would like to report to Council after she talks to the new Supervisor of Elections. The election date will determine the ordinance schedule.

Mayor Goode said that the motion is to consider a new ordinance on a future agenda after the time constraints have been worked out.

Mrs. Corby asked if the motion provides for the same map that was attached to Ordinance No. 2008-54. The Mayor replied yes and said it will be the same request with a different election date.

Mrs. Corby said she can't support the motion. This area is an enclave that has fragmented our system. If the referendum passes, it will further complicate our fragmented system. She clarified that she is fully supportive of giving everyone in the entire area a right to vote because that area will be impacted whether or not the vote occurs. She summarized by saying that the map has been tweaked in favor of those in support of the annexation – and rightly so. However, it forces some residents to annex who are not interested in being in Melbourne.

Mrs. Corby asked the maker of the motion to consider the entire enclave area and give everyone a fair chance to vote, especially if we are going to spend time, money and advertisement costs.

The question was called. The roll call vote was:

Aye: Contreras, LaRusso, Thomas, Meehan and Goode

Nay: Palmer and Corby

Motion carried.

Mayor Goode asked if staff will return within a month or so with a report and the City Manager replied yes.

UNFINISHED BUSINESS

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8. ORDINANCE NO. 2008-55 (A&V No. 319): (Second 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) (First Reading - 9/30/08)

City Attorney Paul Gougelman read Ordinance No. 2008-55 by title. There were no public comments and no disclosures from Council.

Moved by Contreras/LaRusso for approval of Ordinance No. 2008-55. The roll call vote was:

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

Motion carried unanimously.

9. ORDINANCE NO. 2008-56 (CU-2008-03/SP-2008-07) OMNI CANCER CENTER: (Second 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) (First Reading - 9/30/08)

Attorney Gougelman read the ordinance by title. There were no Council disclosures. Mayor Goode opened the public hearing.

Richard Ott, 1601 South Pine Street, stated that he is not against the construction of the building. He informed Council that when he studied real estate, he learned that apartments make a good buffer between commercial and residential. His home, which is zoned residential, abuts the subject property. A few years ago he attempted to rezone for a triplex, but was told he didn't have enough property. He discussed the size of his property and concluded by saying his intent is to apply for zoning that would allow a triplex on his property because of the traffic the new development will create.

A brief discussion followed regarding the location of Mr. Ott's house.

Dave Menzel, representing the applicant, was available for questions.

Moved by Meehan/Palmer for approval of Ordinance No. 2008-56, based upon the findings and conditions contained in the Planning and Zoning Board memorandum. The roll call vote was:

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

Motion carried unanimously.

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10. ORDINANCE NO. 2008-57 (CU-2008-05/SP-2008-09) PRITCHETT METAL PACKAGING CENTER (863 WASHBURN ROAD): (Second 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.) (First Reading - 9/30/08)

Note: During the first reading of the ordinance, Council directed an additional condition be added to the ordinance as follows:

- k. *No crushing or shredding of motor vehicles or similar sized objects shall be permitted on site.*

Attorney Gougelman read the ordinance by title. There were no disclosures by Council, and the Mayor opened public hearing.

James Teele, 2442 Empire Avenue, asked if items as large as refrigerators and stoves would be processed on site.

Mrs. Palmer pointed out the new condition, which states “no motor vehicles or similar sized objects...”

Michael Horne, Soyka Engineering, representing the owner, was available for questions.

Moved by LaRusso/Thomas for approval of Ordinance No. 2008-57, based upon the findings and conditions contained in the Planning and Zoning Board memorandum and condition “k” added at the September 30 meeting. The roll call vote was:

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

Motion carried unanimously.

11. 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.)
- a. Ordinance No. 2008-58/AR-2008-226: (Second Reading/Public Hearing) An ordinance providing for annexation of 1.71± acres and the adjacent 1.18±-acre right-of-way. (First Reading - 9/30/08)

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- b. Ordinance No. 2008-59/CPA-2008-08AD: (Second Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment; establishing a Future Land Use of Commercial/Industrial on 1.71± acres. (First Reading - 9/30/08)
- c. Ordinance No. 2008-60/Z-2008-1139AD: (Second Reading/Public Hearing) An ordinance establishing an M-1 (Light Industrial) zoning district on 1.71± acres. (First Reading - 9/30/08)

The City Attorney read the ordinances by title. There were no disclosures from Council and no comments during the public hearing.

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

The roll call vote was:

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

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.

The roll call vote was:

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

Motion carried unanimously.

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

The roll call vote was:

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

Motion carried unanimously.

NEW BUSINESS

- 12. COUNCIL ACTION RE: Contract Award for Cured-In-Place Pipe Rehabilitation Services, Project Nos. 31609, 30707, 32009, 35209, Insituform Technologies, Inc., Jacksonville, FL - \$1,165,765.

Michelle Shultz, Utilities Engineer, Public Works and Utilities Department, was available for questions.

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Mrs. Corby asked if there is a contractor in our community who could do this work. Ms. Shultz replied that she is not aware of a local company that could do this size project. She added that the City went out for competitive bid three years ago and this is the last year of that contract.

Moved by Palmer/Meehan for approval to piggy-back the City's continuing annual contract with Insituform Technologies, Inc. for cured-in-place pipe (CIPP) rehabilitation services (RFP-10-111-0-2005) in the amount of \$1,165,765. Motion carried unanimously.

13. CONSENT AGENDA:

Moved by Thomas/LaRusso for approval of the consent agenda. Motion carried unanimously.

- a. Approval of Construction Contract Modification #1 for the Pineda Causeway Waterline Replacement, Project No. 33605, in accordance with the November 16, 2007 Interlocal Agreement with Brevard County - \$19,381.99.
- b. Contract award for the purchase and delivery of Sodium Hydroxide (50% Rayon Grade Caustic Soda) for Water Production, Key Chemical, Inc., Waxhaw, NC - \$3.99/gallon; estimated annual cost of \$2,483,164.53.
- c. Contract award for fire hydrant and valve repair and replacement, Project No. 35109, Mueller Services Company, Tamarac, FL - estimated annual cost of \$175,000.
- d. Contract award for Sanitary Sewer Manhole Rehabilitation in the University Park and Croton Road areas, Project No. 31909, Chaz Equipment Company, Wellington, FL - at specified unit prices; total estimated cost of \$150,000.
- e. Contract award for Sanitary Sewer Manhole Rehabilitation from Croton Road to Lift Station #55 using the Raven Lining System, Dallas 1 Construction & Development, Inc., Thonotosassa, FL - at specified unit prices; total estimated cost of \$150,000.
- f. Contract award for the purchase of fertilizer with pre-emergent herbicide for the golf courses, Sunniland Corporation, Sanford, FL - \$1,800/ton; estimated annual cost of \$118,000.
- g. Contract award for the replacement of an 80 ton chiller unit at Eau Gallie Civic Center, Sunchaser Mechanical, Inc., Palm Bay, FL - \$66,400; and approval of an appropriation of \$66,400 from the General Fund Fund Balance Prior Year Surplus to provide funding for this work.
- h. Resolution No. 3029: A resolution canceling the December 23, 2008 regular City Council meeting.

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- i. Resolution No. 3030: A resolution adopting the name “Harry Goode Way” for a private street, located within Melbourne International Airport property.
- j. Resolution No. 3031: A resolution authorizing the City Manager to negotiate an Interlocal Service Boundary Agreement with Brevard County to designate a Municipal Service Area and provide for public services both before and after annexation.

14. ITEMS REMOVED FROM THE CONSENT AGENDA

15. PARKING LOT APPROVAL (PR-2008-01) MUSTARD’S/EYE DOCS INC. OF MELBOURNE: (Public Hearing) A request for approval of a parking lot partially located within a residential district on 0.394± acres zoned R-1A (Single-Family Residential), located on the southeast corner of New Haven Avenue and Helen Street. (Owners/Applicants - Mike Pavlick and Eye Docs Inc. of Melbourne) (Representative - C.J. Bock, MBV Engineering, Inc.) (P&Z Board - 9/18/08)

Mayor Goode referenced the email from Thomas Goffinet dated October 13 outlining several points for Council to consider.

Mrs. Dittmer reviewed the request and reported that the Planning and Zoning Board, at its September 18 meeting, voted six to one to recommend approval subject to the following conditions:

- a. The parking lot shall be constructed substantially consistent with the one-page plan prepared by MBV Engineering, Inc. of Melbourne, Florida with Project Number 07-1228, with a signed and sealed date of September 5, 2008.
- b. Any change to the site plan will require reevaluation by the Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan as outlined in Appendix B, Article IX, Section 6 (E), will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.

- c. Any modification/removal of improvements in the New Haven Avenue right-of-way will need to be coordinated with the Engineering Department, due to a maintenance bond covering the streetscape improvements.
- d. The residentially zoned portion of the parking lot is to be adequately screened as required by Appendix D, Chapter 9, Article V, Section 9.77 (a) (6), unless a variance is granted by the Zoning Board of Adjustment specifically for a reduction of the depth requirement from 10 feet to approximately five feet for the 30-foot section of parking area adjacent to the single-family residential lot to the east. In order to meet the 10-foot setback from Helen Street, the required opaque fence shall be a minimum of eight feet in height, due to stormwater pond contours.

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There were no comments during the public hearing.

Moved by Meehan/Thomas for approval of PR-2008-01 based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried.
Council Member LaRusso voted nay.

16. ORDINANCE NO. 2008-61 (Z-2008-1138) AND ORDINANCE NO. 2008-62 (CU-2008-04), AND SITE PLAN APPROVAL (SP-2008-08) PARKWAY PLACE MIXED-USE: Ordinances providing for a zoning change and a conditional use and site plan approval on a 14.73±-acre parcel, 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.) (P&Z Board - 9/18/08)
- a. Ordinance No. 2008-61/Z-2008-1138: (First Reading/Public Hearing) An ordinance changing the zoning from R-2 (15) (One-, Two-, and Multiple-Family Medium Density Residential with a cap of 15 units per acre) to C-1 (Neighborhood Commercial) on a 14.73±-acre parcel.
 - b. Ordinance No. 2008-62/CU-2008-04: (First Reading/Public Hearing) An ordinance granting a conditional use to allow the development of 96 multiple-family residential apartment units on an 8.53±-acre portion of a 14.73±-acre parcel.
 - c. Site Plan Approval (SP-2008-08): (Public Hearing) A request for site plan approval to allow a mixed-use development, including a 96 multiple-family residential apartment complex with 27,500± square feet of retail office space, a 150-seat restaurant, a 3,500± square foot day care center, and a 3,807± square foot bank on a 14.73±-acre parcel.

In addition to the correspondence in the agenda package, Mayor and Council received the following:

Email dated October 13 from “trudeek1@cfl.rr.com” transmitting the current neighborhood watch statistics for Manatee Cove, the affordable housing development managed by the Richman Group; email dated October 13 from Lori Rughe representing Margaret Rughe, Weston Park Subdivision, to Council Member Corby asking for information about the project; email dated October 13 from Joe Hunt, 2260 St. Theresa’s Way, questioning the need for this project and recommending the developer build a 55-plus senior community; email dated October 14 from Rich and Sandy Moore, 3545 Serenity Lane, outlining opposition to the request; email dated October 14 from Jennifer and Larry Fitch, 3234 Brentwood Lane, outlining opposition to the request; email dated October 14 from Mike Foresta, 2680 Lake Hill Road, outlining opposition to the request; email dated October 14 from Richard and Wendy Nink, 3035 Gentle Breezes Court, outlining opposition to the request; email dated October 14 from Thomas Hutchison, 3025 Gentle Breezes Court, requesting this Section 8 housing plan be moved to another area; email dated October 14 from Tom and Melanie Oliver, 4515 Willow Bend Drive, outlining

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opposition to the request; and email dated October 14 from James and Donna Eriksen, 3157 Ottawa Court, outlining opposition to the request.

Additionally, a PowerPoint presentation (without a cover letter) was distributed, which outlines opposition to the request. (During the public hearing, Mr. James Swank said that he is the author of the PowerPoint presentation.)

Attorney Gougelman read the ordinances by title. Mrs. Dittmer briefed Council and located the property on the map.

The applicant currently has an approved site plan for 152 residential units that were proposed as condominium style units; however, there are not any conditions that would prohibit the development of other multiple-family style residential units. In addition, the applicant has a pending site plan approval for a 216-unit multiple-family development, very similar to an earlier plan approved by City Council in 2005. This new proposed mixed-use site plan resulted from concerns voiced from the surrounding neighborhood. Based upon these concerns, the applicant has voluntarily offered several conditions that would limit the amount of “low-income” units and would require other security commitments for the development.

The Planning and Zoning Board voted five to two to recommend approval, subject to the following conditions. Subsequent to the Planning and Zoning Board meeting, City staff met with the applicant to revise one condition related to the income level of the future residents within a “family” development. During the Planning and Zoning Board meeting, the applicant stated that he was not in favor of the wording contained in the Planning staff memorandum due to a gap in the income allowances for persons earning between 61% and 79% of the median household income. Therefore, condition g.(3)(a) has been revised and the language is reflected below.

- a. Any change to the site plan will require reevaluation by the Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan as outlined in Appendix B, Article IX, Section 6 (E), will require review and approval by City staff, the Planning and Zoning Board, Local Planning Agency, and/or the City Council.

- b. Appropriate environmental permits, including permitting for the gopher tortoises, must be obtained as part of the construction plan review process.
- c. All hardwood trees and scrub oaks located outside of the building footprint and parking driveway aisles shall be preserved, and buildings and parking/drive aisles shall be shifted when possible to preserve hardwood trees or scrub oaks, as determined during construction plan review.
- d. In conjunction with the development of this project, the applicant shall provide a minimum of an additional 10 feet of right-of-way on Wickham Road and at the intersection with Parkway Drive if necessary, and construct a dedicated right turn

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lane and a transitional lane onto Parkway Drive, if permitted by Brevard County. The details of the right-of-way and timing of construction shall be mutually approved during the construction plan review process, and impact fee credits may be given for the contribution of the land, engineering design, and actual construction costs as determined by the City Engineer.

- e. The proposed buildings shall be substantially consistent with the rendering submitted by the applicant.
- f. The management plan and restrictive covenants submitted by the owner/developer to the City of Melbourne shall be revised to be consistent with these conditions of approval and recorded in the Public Records of Brevard County, Florida. Mortgagees and other holders of security interests in the subject property shall join in and consent to the management plan and restrictive covenants. The management plan and restrictive covenants shall be enforceable by the City of Melbourne.
- g. Consistent with commitments voluntarily proposed by the applicant:
 - (1) Any multi-family residential rental development on the subject property shall provide onsite management and maintenance staff. The owner/operator of any residential rental development on the subject property shall at all times to the best of its ability, take any reasonable action necessary to eject residents, or invitees of residents, who are convicted of any violation of any provision of law on the subject property, and which condition materially affects the quality of life on any of the Affected Properties. The owner/operator shall at all times assure and take action to assure that any residential rental development, apartment units therein, or residents thereof or their invitees, on the subject property do not create or cause a nuisance, whether *per se* or *per accidens*, to any portions of the Affected Properties or the residents of the Affected Properties.
 - (a) The owner/operator of the subject property shall supply contact information for a local contact person who will represent the owner/operator of the residential rental project and respond to emergencies on a twenty-four (24) hour/seven (7) day a week basis to calls from the Board of Directors of the Adjacent Associations. The owner/operator of the subject property shall supply contact information, including a cellular telephone number or other more advanced technology for immediate contact with the contact person by members of the Board of Directors of the Adjacent Associations.
 - (b) The onsite manager or other representative of the owner/operator of the residential development on the subject property with authority to make changes to the owner/operator's method of operation on the subject property shall meet with the Board of Directors of the Adjacent Associations at a joint meeting annually, with the first

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meeting held not later than 90 days after the issuance of the first Certificate of Occupancy by the City for the development in the residential component of the subject property. An authorized representative of the owner/operator operating the rental residential portion of the subject property with authority to make changes to the owner/operator's method of operation on the subject property shall meet with the Board of Directors of the Adjacent Associations within 30 days of a written request from the Associations' Board of Directors.

- (c) As used in this condition (1), the following terms shall be defined as meaning:
1. "Affected Properties" shall mean and refer to property known as Park Village, which property is described in Exhibit A-2 of a special warranty deed described in Official Records Book 5517, Page 7942, Public Records of Brevard County, Florida; Weston Village, according to the plat thereof, as recorded in Plat Book 36, Page 36; Weston Park, Phase I, according to the plat thereof, as recorded in Plat Book 29, Page 90; Weston Park, Phase II-B, according to the plat thereof, as recorded in Plat Book 32, Page 72; Weston Park, Phase III, according to the plat thereof, as recorded in Plat Book 32, Page 73; Weston Park, Phase IV, according to the plat thereof, as recorded in Plat Book 34, Page 28; or Weston Park, Phase V, according to the plat thereof, as recorded in Plat Book 34, Page 29, all in the Public Records of Brevard County, Florida;
 2. "Adjacent Association" shall mean the Weston Village Homeowners' Association, Inc., a Florida not-for-profit corporation, and the Weston Park of Brevard Homeowners' Association, Inc., a Florida not-for-profit corporation, or any successor or other homeowners-type of association having jurisdiction over any of the Affected Properties.
- (2) To assure safe conditions for residents on site or on the adjacent properties, onsite management shall operate 24-hour electronic video monitoring and recording within the residential development parking lots and common areas. The video monitoring system shall allow for additional surveillance of areas on the subject property at the request of and as deemed necessary by the Melbourne Police Department and on-site management of the owner/operator.
- (3) In order to provide a mix of housing opportunities, multi-family residential rental development on the subject property shall be permitted to have any combination of any or all of the following types of residential development

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utilizing the following percentage of affordable units consistent with federal and state funding requirements:

- (a) An all age “family” community shall provide a maximum of 40% of the total units as income restricted units in order to comply with the Internal Revenue Service definition for a “low income housing credit” development. Sixty percent of the residential units on the subject property shall be solely occupied by persons/households having a greater income above 60% of the area median gross income for Brevard County; or
- (b) An elderly community developed and operated consistent with the provisions of 42 USC §3607(b)(2) and having residents primarily 55 years of age and older, may utilize household maximum income limits for all of the units; or
- (c) An Assisted Living Facility may utilize household maximum income limits for all of the units.
- (d) The owner/operator of the multi-family residential rental development shall continuously maintain records relating to occupants of the residential units. In the event that the residential portion of the project is operated pursuant to condition (3)(a), the records shall be financial income records demonstrating compliance with condition (3)(a). In the event that the residential portion of the project is operated pursuant to condition (3)(b), the records shall be records reflecting the age of the occupants demonstrating compliance with condition (3)(b). Records shall be verified by management upon application to rent. All of the aforesaid records shall be provided to the City for inspection upon written request of said records for verification of compliance with this condition (3).
- (e) As used in this condition (3), the following terms shall be defined as meaning:
 - 1. “Assisted Living Facility” shall be as defined in Article II (11), Appendix B, Melbourne City Code, as revised from time to time and generally applicable throughout the City.
 - 2. “Low income housing credit” development means a community that complies with Internal Revenue Code Section 42(g)(1) specifically:

The term “qualified low-income housing project” means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B), whichever is elected by the taxpayer/owner of the subject property:

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- (A) 20-50 test. The project meets the requirements of this subparagraph if 20% or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50% or less of the area median income for Brevard County; or
- (B) 40-60 test. The project meets the requirements of this subparagraph if 40% or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60% or less of the area median income for Brevard County.
- (4) Prior to the issuance of the first Certificate of Occupancy for a residential unit on the subject property, the owner/developer shall construct and continuously maintain a six (6) foot high concrete panel wall along the east and south property line as permitted by the City of Melbourne.
- (5) Multi-family residential rental development shall be permitted to provide three or four bedrooms for a maximum of 40% of the total units.
- (6) The conditions and restrictive covenants submitted by the owner/developer during the issuance of this development order shall be revised consistent with comments by the City Attorney and recorded in the Public Records of Brevard County, Florida, prior to the issuance of the first building permit for a residential unit on the subject property. Any mortgage holder or holder of a security interest in the residential property at the time of recording of the conditions and restrictive covenants shall in recordable form join in and consent to said conditions and restrictive covenants.
- h. The commercial portion of the development may not contain any residential units.
- i. The owner/developer shall not subdivide any part of the land into more than two lots without receiving subdivision approval per Appendix D, Chapter 8, City Code.
- j. Upon approval of SP-2008-08 all previously pending or approved plans for this property shall become null and void.
- k. As required by Chapter 10, Appendix D, and Chapter 32, Melbourne City Code, to reserve capacity, the owner/developer shall be required to pay the amended capacity reservation fee in the amount of \$24,421.50 for transportation, water and sewer impact fees, (on January 9, 2007, the applicant paid \$64,881.00 for 152 condominium units). Payment must be received by the City of Melbourne within ten business days of the date of rendition of the development order by the City Council. The development order shall not become effective until payment of the capacity reservation fee has been made payable to and received by the City of Melbourne.

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Mrs. Dittmer clarified some of the correspondence received, which indicates that this is a Section 8 housing development. She stated that the applicant is not building a Section 8 funded housing development. It is proposed as an affordable housing development that will receive state tax credits.

Recessed: 7:30 p.m.
Reconvened: 7:35 p.m.

Mayor Goode called for disclosures.

Vice Mayor Kathy Meehan reported that on October 9, 2008 she met with Attorney Repperger at the Law Offices of Gray Robinson, which included a conference call from Damon Kolb with the Richman Group. They discussed that 40% of the 96 units will be affordable housing; there will be an IRS tax credit for 10 years; and the plan includes a mixed-use of rental apartments and commercial. During the meeting, Mrs. Meehan said she stated that Wickham Club Apartments is a problem in the area. Mr. Repperger noted that one of the conditions includes on site management and 24 hour electronic video monitoring of the parking lots and common areas. On October 14, 2008 she received a call from Joel Crisafulli, 2608 Lowell Circle. Mr. Crisafulli is in favor of the commercial; he is opposed to the residential portion; he would like a seniors only development; and he is concerned about the crime issues related to Wickham Club Apartments and Hampton Greens.

Mr. Thomas disclosed that on October 1, 2008 he received a message from the applicant's attorney requesting a meeting. Mr. Thomas returned the call and declined the opportunity to meet. And, today he returned a call from Joel Crisafulli who said he hoped Council would remain open minded and review all the evidence.

Mrs. Palmer reported that she declined an invitation to meet with the Richman Group.

Mrs. Corby said she received an invitation in September from the applicant to review the plan; however, she declined the invitation. Today she received a phone call from Joel Crisafulli requesting Council keep an open mind and have good dialogue. They discussed nothing that would impact her decision at this meeting.

Mr. LaRusso stated that on October 7 he returned a call from Gray Robinson and declined an invitation to meet with the applicant and Attorney Repperger. Today Joel Crisafulli began to speak to him about the project; however, Mr. LaRusso asked him to stop. He noted that he prefers to not gather information outside of public hearings so that the information is fair and balanced.

Mr. Contreras disclosed the following: On March 13, 2008 he initiated a conference call with Cindy Dittmer to Mr. Kolb with the Richman Group. They discussed withdrawal of Parkway Place Apartments; the developer indicated they are undertaking a market analysis for alternative use of the property; and they confirmed that the 152-unit townhome site plan has been extended to April 2009. On June 6, 2008 he returned a

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message from Attorney Repperger, representing the Richman Group, who asked to schedule a meeting to discuss a significantly revised plan. On June 23, 2008, he met with Mr. Kolb, Mr. Repperger and City Attorney Paul Gougelman at City Hall. They reviewed a conceptual plan that included a bank, restaurant, daycare facility, office/retail units; rezoning to C-1; and 96 residential units. On June 23, 2008 he spoke with Mr. Crisafulli and informed him of the meeting held to review the revised site plan. On October 3, 2008 he met with Mr. Kolb and Mr. Repperger regarding the apartments. Additionally, he met with the City Attorney, Assistant City Attorney Suzanne Crockett, and Cindy Dittmer at City Hall to review the conceptual site plan, the September 18, 2008 Planning and Zoning Board approval, and the voluntary conditions. On October 13, 2008 he spoke with Mr. Crisafulli who stated that those concerned are in support of the 55-plus option. He also expressed concern that during the Planning and Zoning Board meeting it was revealed that the approved 152-unit townhome site plan could be all affordable housing.

Mayor Goode informed the audience that it his typical policy not to meet or speak with anyone on quasi-judicial items prior to the public hearing.

Mayor Goode opened the public hearing.

Cliff Repperger, attorney representing the applicant, stated that right now they have approval for a 152-unit project on this site that was approved on April 25, 2006. That site plan expires April 25, 2009. The other option is the site plan application for a 216-unit affordable housing development, which has been postponed until Council's November 25 agenda. If the plan being proposed at this meeting is approved, all existing site plans and applications will go away.

The site plan on this agenda is the evolution of the 216-unit plan from the time it was postponed late last year until now. There has been an ongoing dialogue between the Richman Group and the surrounding residential neighborhoods. The applicant recognized there was significant opposition and met with neighbors on numerous occasions. As a result, the plan on this agenda is a mixed-use project with commercial fronting Wickham Road and residential on the east side of the property.

Attorney Repperger explained that the site plan includes approximately 39,307 s.f. of commercial use and 96 residential units. The applicant believes that the residents wanted to see commercial rather than an overall residential or affordable housing development. The plan had to have a residential component because the developer's business is residential development. The developer has proposed a significant limit of no more than 40% of the residential units being affordable units.

The applicant understands that the residents have concerns with the affordable component of the development. To address those concerns, the applicant is offering a number of voluntary conditions aimed at fostering communication with the surrounding neighborhood; providing monitoring and a management plan to address unlawful activity on the property; and limiting the number of affordable units.

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Mr. Repperger referenced the change in language between the Planning and Zoning Board meeting and this meeting. The change evolved from the type of financing that this project is qualifying for. The condition has been amended to reflect the IRS code section. Attorney Repperger stated that they believe the language puts a firm 40% cap on the affordable units out of the 96 residential units being proposed.

Continuing, Mr. Repperger said that they recognize they don't have unanimous support from the neighborhood. They tried to incorporate what they could into the plan. One of the things Council will hear is that the neighbors are agreeable to an over 55 community. The developer did not necessarily reject that issue and the staff conditions provide for the possibility of an over 55 community with all the units being affordable. He pointed out that the site does not meet the conditions required for an over 55 community, including a walk-in clinic. Additionally, the developer has provided an option for an assisted living facility, which would also have no cap on the number of affordable units.

That concluded Mr. Repperger's comments. He informed Council that with respect to technical questions the following people are available: Matt Soyka, Soyka Engineering; Richard Mercer, Kimley Horn; and Damon Kolb, development associate with the Richman Group.

Mrs. Palmer referenced condition 3, which states, "...development on the subject property shall be permitted to have any combination of any or all of the following types of residential development...an all age family community...an elderly community...an assisted living facility..." She asked the City Attorney to review this language and ensure that it holds the developer to the 40% limit on affordable units. She noted that the "any combination of any or all" language concerns her. The all age family community provides for a maximum of 40% affordable, the elderly community provides that all units may be affordable, and the assisted living facility provides that all units may be affordable. She stated that this does not appear to hold the developer to a 60/40 split.

Attorney Gougelman briefly discussed the options available under this condition and stated that he doesn't believe there would be a permutation under which the development would have more than 39 affordable units on the property.

Mr. Repperger replied that is the intent of the condition and that is what the applicant is agreeable to. Mr. Gougelman replied that would be the maximum of the "all age" development.

Mr. Repperger added that the conditions will be incorporated into the restrictive covenants. They will run with the land and any subsequent owner would have to meet those conditions.

Mr. LaRusso asked the number of definitions for affordable housing. Attorney Gougelman agreed there are different statutes and different standards. He clarified that the standard being used for this project is the standard in the Internal Revenue Code.

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Mr. LaRusso asked if the Richman Group develops and/or manages any non-affordable classified property. Mr. Repperger replied not much.

Mr. Repperger addressed Mrs. Palmer's concern and said that the Richman Group is willing to strike the "combination" language so it would be either/or with regard to the various types of developments.

Damon Kolb, representing the Richman Group, West Palm Beach, reported that they have owned and managed Rivercrest Apartments on U. S. 1 north of Parkway Drive for 15 years, which is a market rate development. Principally, however, they own and manage income-restricted developments. Additionally, they have experience managing 55 and over developments.

In response to Mrs. Corby, Mr. Kolb confirmed that Richman owns and manages Manatee Cove.

Mrs. Corby referenced the 152-unit site plan, Site Plan 2006-05, and asked the expiration date. Mr. Repperger replied April 25, 2009. Mrs. Corby asked when it received that extension. Mr. Repperger said in February 2008 when Council adopted a resolution granting an overall extension to site plans.

Mrs. Corby asked how the 152-unit townhome style condominium would be defined. Mr. Kolb said that they would be tied to two-story direct entry units. He added that the distinction staff was trying to make is that plan does not have any voluntary commitments. The original intent was to sell those units, although that is not required; the units could be rented.

Mrs. Corby asked if each unit would include a two-car garage, visitor parking, and 1,400 – 1,800 s.f. under air. Mr. Kolb replied correct. Mrs. Corby said it was previously noted that the market rate price for each unit would be the low \$200,000 to \$300,000 range. Mr. Kolb commented that he wished he could sell them at that price. He confirmed that the economy lead to a change in the plan.

Mrs. Corby remarked that Mr. Kolb also previously commented that a townhome product would be much more compatible for the area. In response, Mr. Kolb agreed that they were very interested in trying a new market; however, that market has collapsed.

Attorney Gougelman said that when the Richman Group proposed the 216-unit project as all affordable units, former legal representatives of the Richman Group made charges that there were potential violations of civil rights laws with regard to affordable housing. Mr. Gougelman asked the applicant to confirm that they have voluntarily limited the number of affordable housing units with this plan.

For the record, Attorney Repperger stated that these are voluntary commitments offered to the City by the Richman Group. The applicant is simply recognizing what is best for the community with respect to the proposed development. Following brief discussion, Mr.

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Repperger agreed that all the conditions are offered voluntarily and meet all fair housing standards.

Mrs. Corby asked the elevation/height of the property. Mr. Kolb replied that this is not an engineered site plan; it is a conceptual site plan at this point.

Matt Soyka, civil engineer representing the applicant, stated that they don't have any survey information; however, it is very similar to the adjacent property. That will likely change at the time of development because of drainage rules.

With regard to drainage, Mrs. Corby asked which way the water would flow. Mr. Soyka said probably to the north into the "Parkway ditch." All the subdivisions in that area drain into that ditch, which is located on the south side of Parkway Drive. He elaborated on the path and stated that water from the Parkway ditch eventually flows to Horse Creek/Indian River.

Mrs. Corby asked if there has been any flooding over the past 10 years between this property and the exit point of the Indian River. Mr. Soyka replied yes, during Hurricane Erin and Tropical Storm Fay. He added that he's not sure about any events in 2004. Deputy City Manager Howard Ralls said that he doesn't recall specific flooding in 2004.

Mrs. Corby asked if any improvements have been made to the drainage system since then. Mr. Soyka outlined the improvements that he recalls and he discussed the type of drainage system that he anticipates being constructed on the subject property. Except during a hurricane, the property will have virtually no run off or discharge into the Parkway ditch. Mr. Soyka confirmed that when developed the property will have more capacity than the City's ordinances (Chapter 27) require.

Mayor Goode asked Council to focus on the subject plan, which has a lower density than the 152-unit plan approved for the site.

Mr. LaRusso questioned the comment about "market value" and asked if Council can control the type of use. Additionally, he asked if the Richman Group has the ability to change the 152 units to all affordable housing.

Attorney Gougelman explained that zoning regulates use, not ownership. For example if the site plan calls for condominium/townhome units, the development would have to be townhome units. However, if Council requires the units to be condominiums, we run into a problem because that specifies a type of ownership.

A brief discussion followed regarding what changes would require the 152-unit site plan to return to Council. Mrs. Dittmer said that there is a rendering tied to the plan; however, there are no specific conditions that require the units to be two-story, townhome style, and owner occupied. Mrs. Corby pointed out that the following specific items were presented with the site plan: two-story, two-car garage, and 1,400 – 1,800 s.f. under air. She asked if the developer could change or alter the plan. Mrs. Dittmer explained that they could change anything up to the point of tripping a threshold in one of the categories

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in the Code. The categories include land use, increasing the scale, decreasing open space, decreasing setbacks, and increasing height.

Mayor Goode invoked the 10-minute rule on Mrs. Corby and said she has gone past her allowable time. The Mayor opened the public hearing.

Joel Crisafulli, 2608 Lowell Circle, reported that the Richman Group has been willing to listen, make exceptions and possible changes. The residents recommended commercial use on the site, the residents did not recommend more affordable housing. Mr. Crisafulli pointed out that they currently have affordable housing developments on the other side of Weston Drive, directly across the street and across the back. He noted that one reason the residents recommended a senior development is the location of the senior center being constructed in Wickham Park.

Mr. Crisafulli reported that Land Design Innovations prepared an evaluation and appraisal report. In its report, LDI recommends that affordable housing be located near limited residential areas and specifically developed in infill and redevelopment areas. Additionally, he referenced research that has been conducted, which states affordable housing should be dispersed and area property values are more likely to be negatively affected when affordable housing is clustered.

Mr. Crisafulli concluded by saying this plan would result in clustering of affordable housing. He questioned the need and noted the number of vacancies in the area.

Mrs. Corby attempted to ask Mr. Crisafulli a question. The Mayor stated that Mrs. Corby exceeded her 10-minute limit; however, he will allow one question. Mrs. Corby pointed out that she is permitted to ask questions. Discussion followed.

Moved by Palmer/Corby to allow each Council Member to ask as many questions as they feel they need. The roll call vote was:

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

Nay: Goode

Motion carried.

Mrs. Corby asked Mr. Crisafulli how long he has lived in Weston Village and how many times he has flooded. Mr. Crisafulli replied he has lived at this address for 16 years and the area has flooded three times during hurricanes.

James Swank, 2642 Lowell Circle, stated that he is the author of the PowerPoint presentation distributed to Council. Mr. Swank referenced the voluntary commitments made by the Richman Group and asked how they are defined.

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Attorney Gougelman explained that the voluntary commitments are included in writing in the two ordinances. If the ordinances are adopted, the normal way of enforcement would be through the code enforcement process. Another method involves court action.

In response to Mrs. Corby, Mr. Swank said he has lived in Weston Village for 14 years and prior to that in Weston Park for four years. His home has never flooded because he's on the high side of the development. However, he has not been able to get out of his development three times because of flooded streets.

Joseph Whetsel, 2942 St. Marks Avenue, said that he assumes the flooding and water problems will be taken care of before any building will be considered. Mr. Whetsel said that the residents have proposed the entire complex be 55-plus. It would be compatible with the area and would complement the senior center being constructed at Wickham Park. Mr. Whetsel outlined the benefits of going with a senior development.

Mrs. Corby asked Mr. Whetsel how long he has lived in Weston Park and how many times it has flooded. Mr. Whetsel replied four years. It has flooded once since he has been there.

Pat Poole, 805 E. Palmetto Avenue, stated that she has been in on this since the very beginning when she was on Council. She stated that she requested to speak last on this item. The people who live in the area should be the ones who speak.

Richard Nink, 3035 Gentle Breezes Court, representing Park Place Homeowners' Association, stated that he feels this project is not compatible with the surrounding area. They will be impacted by this project, particularly by flooding. He described the retention pond and drainage system in his area and said that additional development will cause water to backup more. They have flooding in their neighborhood and it needs to be addressed prior to any additional building in the area.

Mr. Nink said that the Planning and Zoning Board chose to dismiss the drainage issue. He added that these 100- and 200-year storm events are happening at a greater frequency. Mr. Nink noted that his neighborhood is also opposed to affordable housing in the area. They have more than their fair share. He asked Council to disperse this type of housing throughout the City and help integrate those members of society.

In response to Mrs. Corby, Mr. Nink replied that he has lived in his home for seven years and he has seen the area flood at least twice.

A brief discussion followed regarding the stormwater project at Wickham Park and the area drainage. City Engineer Jenni Lamb said the retention pond at the corner of Parkway and Croton was constructed to take on water that runs into the Parkway ditch and the Croton system. Any stormwater entering that pond from Wickham Park would be just from the immediate slopes.

Mrs. Corby pointed out that our Code provides a standard that no water over one foot should stand in any one area over a 24 hour period. She asked Mr. Nink if he had water

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over one foot stand longer than 24 hours in the last five years. Mr. Nink replied absolutely, several times.

Jack Ippel, 2900 St. Marks Avenue, stated that the retention pond by Croton Road is a travesty. It's all silted up and does nothing but build up algae, which goes straight out to the Lagoon.

Continuing, Mr. Ippel said that townhome projects aren't going very well. The projects that have been permitted are sitting with no activity. He recommended that the developer build a congregate living facility, which is a step below an assisted living facility. Mr. Ippel elaborated on the operation of a congregate living facility.

Mr. Ippel returned to the discussion on drainage and said that the developer ought to take out a 20-year flood policy for everyone in the area. He closed by discussing the current traffic pattern and the impact this development will have.

Mr. Contreras asked staff the difference between an assisted living facility and a congregate living facility. Mrs. Dittmer replied that the City Code treats them as the same.

Joseph Hunt, 2260 St. Theresa's Way, said he has lived in Weston Park a little over 15 years. As a retired chaplain, Mr. Hunt said he would have a hard time with his conscience if he felt he was blocking a person's needs. With regard to affordable housing, he stated there is not a need in the area. Affordable housing surrounds this area and the developments are giving away free rent to attract people. Mr. Hunt discussed the need for an assisted living facility or a 55-plus community. He asked the Richman Group to carefully consider changing its project to meet the needs for a 55-plus housing development.

Mrs. Palmer pointed out that this proposal is for mixed-use commercial/residential. She said that none of the speakers has addressed the commercial aspect. Mr. Hunt replied that he does not believe the residents object to commercial, although there are concerns about traffic.

In response to Mrs. Corby, Mr. Hunt said the area has flooded twice.

Tammy Sandberg, 2983 St. Helen's Way, pointed out that there have been multiple site plans associated with this property. The residents are not sure what is on or off the table, and a single plan should be identified so residents can make constructive comments. The plan should consider that current economic conditions have expanded the inventory of multi-family and single-family housing units available in the area. An additional inventory of housing units to this area will negatively affect value of existing residential properties in an already distressed market. Consideration must be made for the development to be compatible and complementary to the existing environment. Specifically, it would be prudent for the Richman Group to consider in its planning the senior center being constructed at Wickham Park. An assisted living facility or a retirement community would be more appropriate. Additionally, she noted that she is not

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opposed to the commercial development included on the front portion of this project. Finally, with any plans, the concerns for adequate stormwater management must be a major element to avoid future flooding problems like those recently experienced in the neighborhoods during Tropical Storm Fay.

Mrs. Corby asked Mrs. Sandberg how long she has lived in this area. Mrs. Sandberg replied that in 16 years it has flooded three times, although they've never had water stand longer than 24 hours due to pumping efforts by the City.

Michael Dujovne, 2626 Lowell Circle, said that he has lived in Weston Village since 1998. Overall, the pleasant experience of living in the area is somewhat being eroded. In particular, there is no question crime has risen as a result of Wickham Club Apartments. Residents speak from experience about what comes from these types of developments being located in close proximity to each other. Mr. Dujovne addressed traffic and said people use the area as a throughway to access Parkway Drive from Weston Drive.

Continuing, Mr. Dujovne discussed his experience as an attorney who handles landlord/tenant related issues. He noted that statistically there are more problems with tenants in developments with the rent range being discussed. Problems range from non-payment of rent, criminal activity, noise, etc. Those are all difficult issues to deal with. Mr. Dujovne pointed out that property managers are under pressure to maintain occupancy levels. With units located this close to each other, the area will see enormous banners advertising free rent and no security deposit.

With regard to flooding, Mr. Dujovne said flooding has been above his knees. The area has flooded twice since he has lived here and he believes water stood for over 24 hours.

Jamie Perri, 3046 St. Marks Avenue, said she has lived here almost 19 years. Ms. Perri stated that Manatee Cove and Hampton Green Apartments – both low-income developments – are located in the area. However, she never really noticed the crime until Wickham Club Apartments was constructed. Ms. Perri elaborated on her experience with crime related to Wickham Club. She concluded by asking Council not to allow this development.

Responding to Mrs. Corby, Ms. Perri said her home flooded during Hurricane Erin and the streets flooded during Hurricane Charley and Tropical Storm Fay.

Mr. Repperger closed by making the following remarks: a six-foot masonry wall be constructed on the south end of this project so there will be no access to Weston Drive; this is a conceptual plan and the developer will have to meet all City and St. Johns River Water Management District drainage standards; there is no way a development can be designed to address an event like Tropical Storm Fay; the developer recognizes there have been flooding events in the area, but they are not applicable to this discussion; the developer has gone from 216 affordable units to 152 units to 39 units, which is a substantial reduction. Mr. Repperger stated that the developer has a right to develop this property. They have made significant concessions in conditions voluntarily offered to protect the community that aren't included with other developments in Melbourne.

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Attorney Gougelman read the following revision to condition 3, which is included in Ordinance Nos. 2008-61 and 2008-62: “In order to provide a mix of housing opportunities, multi-family residential rental development on the subject property shall be permitted to have either ~~any combination of any or all~~ of the following types of residential development...” Attorney Repperger agreed with the revision.

Mrs. Palmer asked the City Attorney if the voluntary commitments are enforceable. Attorney Gougelman replied yes. He noted that some of the conditions might not otherwise be because they almost start to get into the area of controlling ownership rather than use. However, the person to contest them would be the applicant and they have indicated at this meeting that they are proposing the restrictions on themselves. More likely than not a court would say they are enforceable.

Moved by Corby/Palmer to deny this project (Ordinance No. 2008-61) based on the inadequate drainage system in that area and the lack of infrastructure.

Mr. Contreras pointed out that this is a quasi-judicial hearing and he would like the public to understand that Council Members are sitting as judges and making decisions based on the testimony heard at this meeting. He noted that he chose to be cautious in not rendering an opinion during conversations. With regard to the motion to deny, he said that listening to the testimony and reviewing the information, he believes affordable housing should be relative to infill and redevelopment and dispersed to minimize the negative affects. He noted that his only concern is the development may end up completely affordable housing with the existing approved 152-unit townhome site plan. Mr. Contreras closed by saying he will support the motion.

The question was called. The roll call vote was:

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

Motion carried unanimously.

Moved by Corby/Contreras to deny Ordinance No. 2008-62 based on the lack of drainage and the impact on the infrastructure. The roll call vote was:

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

Motion carried unanimously.

Mayor Goode said he does not believe Council needs to vote on the site plan. Attorney Gougelman agreed and said that the site plan is tied to the conditional use, which was just defeated.

Prior to the meeting, Council Member John Thomas asked for the following item to be added to the agenda:

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- 16.1 COUNCIL DISCUSSION RE: Proposal for joint workshop meeting with the City of Palm Bay to discuss joint advocacy for parkway/interchange funding in 2009 Federal Transportation Reauthorization Legislation

Mr. Thomas asked that this item be postponed until the October 28 agenda.

17. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole, 805 E. Palmetto Avenue, asked Council to consider not changing the land use and zoning on established/developed property. Residents purchase their homes in an area based on the land use and zoning.

Mrs. Corby asked how much water we are going to allow to impact our drainage system before we start looking at our infrastructure. She recommended that the City review the codes and consider changing the standards and codes related to drainage.

Mrs. Corby asked when Council is going to review the employee satisfaction survey. Mr. Schluckebier replied that it's currently not scheduled as a Council review item. The results of the internal focus groups have been reported and their action plans summarized. Departments will make improvements in accordance with those plans.

Mrs. Corby asked Council to consider that one of the questions asked of our employees during the survey related to whether they trusted Council would take action on the survey. The number was significant – the employees did not believe Council would take action. If Council does not schedule the report for review, the employees' prediction will be right. She closed by saying this issue is important for Council to review.

Following a brief discussion, Mr. Thomas and Mrs. Palmer agreed that the employee survey should be scheduled for a Council meeting. Mr. LaRusso said he expected it to appear on a future agenda once everyone had an opportunity to vet the issues.

Discussion continued. Moved by Corby/Thomas to direct staff to place the employee survey on the October 28 agenda.

Mrs. Palmer said her concern relates to whether there will be enough time on the next agenda to allow for a good discussion. If not, it should appear on a later agenda. Mr. Thomas asked if this issue merits a special meeting date. The Mayor replied that might be the better way to go.

The maker/seconded amended the motion to schedule this item for a special meeting date prior to November 12.

The question was called on the motion and the amendment. Motion carried unanimously.

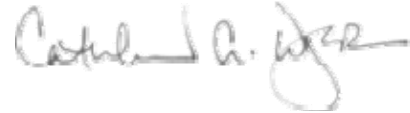
The City Clerk was asked to review the Council Chamber schedule and Council Members' schedules and set a meeting date in the next few days. (Note: Special meeting scheduled for November 5 at 6:30 p.m.)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 14, 2008

18. ADJOURNMENT

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

The meeting adjourned at 9:55 p.m.



City Clerk – 10/22/2008

Approved by Council: _____