

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 28, 2008



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

1. Reverend Darice Dawson, Florida Tech Protestant Ministries, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

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

4. Proclamations and Presentations

Mayor Goode proclaimed November as “Home Care Month.” The proclamation was accepted by Joanne Parsons, Director of Amedisys Home Health Care.

5. Approval of Minutes – October 14, 2008 regular meeting minutes

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

6. City Manager’s Report

Assistant City Engineer – Council Member Joanne Corby referenced the appointment of the new Assistant City Engineer and stated that she was not aware that position was open. City Manager Jack Schluckebier replied that the position was filled over the summer. The individual stayed about a month; however, by mutual agreement it was not a successful arrangement.

Briefing from City’s consultants to West Melbourne City Council – Mrs. Corby asked if the West Melbourne City Council will receive the same presentation that the Melbourne City Council received. The City Manager replied that West Melbourne posed a series of questions to the consultant, which will be addressed. The presentation will be an abridged version of the presentation made to Melbourne.

Post Tropical Storm Fay drainage report – Mrs. Corby referenced the item in the City Engineer’s report relating to the United States Department of Agriculture Natural Resources

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Conservation Service Emergency Watershed Protection Program funds. The City Manager responded to general questions about the grant.

Continuing, Mrs. Corby noted that the report indicates the construction timeframe is not clear for the project “box culvert installation at Croton Road and Horse Creek.” Mrs. Lamb explained that Brevard County has funding, but they are prioritizing projects. Staff will periodically check the status of this project.

Mrs. Corby stated that the report should be clarified because it’s worded in such a way to indicate that a trash can lid blocking the outfall structure was the only cause of the drainage problem in Weston Park. She noted that this area has experienced drainage problems during previous storms and the problems experienced during Tropical Storm Fay should not be solely blamed on a trash can lid.

Council Member Richard Contreras discussed the causes of drainage problems following previous storms. He clarified that with regard to Tropical Storm Fay, an entire plastic trashcan – not just a lid – created the blockage. The can flattened from the pressure and weight of the water and caused the blockage.

Vice Mayor Kathy Meehan pointed out the portion of the drainage report that states several homeowners’ associations had either modified their stormwater systems or had not maintained their systems. (In the case of modifications, homeowners desire the ponds to remain at a certain level for aesthetics and achieve this by blocking the outfall or control structure.) Mrs. Meehan pointed out that this was the problem with drainage in the South Lakes Subdivision. Mrs. Lamb confirmed that most of the modifications discovered by the City can be easily repaired. The City intends to draft a letter to all homeowners’ associations warning of the potential problems that can be created by modifying the stormwater treatment system.

Special City Council workshop meeting – Mrs. Corby referenced the special meeting scheduled for November 5. She informed Council that she asked the City Manager to invite the employees who participated in the focus groups to the workshop meetings to see the fruits of their labor. She noted that she was disturbed by the response she received. The City’s labor attorney advised against inviting the employees because of fair labor practices. She clarified that if this is a pay issue, the note or invitation to the employees can indicate that attendance would be their choice and on their own time. She asked if Council would support a show of good faith and invite those who participated in the focus groups.

Mayor Goode said that when he learned the labor attorney advised against this, he advised the City Manager not to pursue (the invitation).

Mr. Thomas stated that the meeting is open to the public; therefore, anyone can attend. He added that there’s a difference between participating in the process and simply attending and observing. Mr. Schluckebier agreed.

Following brief discussion, Mr. Thomas asked if the labor attorney addressed the issue of employees attending the meeting or participating in the meeting.

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Deputy City Manager Amy Elliott explained that Attorney Andy Hament said there is no question the employees could attend the meeting as a member of the public. However, an actual invitation could be viewed as going outside the collective bargaining process because any item discussed could include terms and conditions of employment.

Mrs. Corby said whether it's a memo or an invitation, it boils down to communication. It would have been a nice gesture on management's part to thank the employees for their participation, inform them that a special workshop meeting has been scheduled, and that the employees are welcome to attend. She stressed that it's all about the wording and staff could have indicated attendance would be on the employees' own time.

Melbourne/West Melbourne merger concept – Council Member Mark LaRusso responded to comments made by a West Melbourne council member that Melbourne has a problem with its brine disposal and further indicated that it goes into the deep well injection system. Mr. LaRusso stated that he was not aware that the City disposed of its brine in the deep well injection system.

Mr. Schluckebier replied that the City operates a deep well for wastewater reuse under current permits; however, we do not use the deep well for brine discharge. He confirmed for Mr. LaRusso that the City is in complete compliance with all of the regulatory agencies. Mr. LaRusso asked staff to provide this information to City Council in writing so it becomes a public record.

7. Public Comments

Fred Coladonato, 2107 Franklin Street, reported that the swale on his property, located on the east side of Franklin Street, is causing water to wash dirt from beneath his house. His blocks have cracked and the house is settling. He asked the City to take care of the swale so that water does not drain beneath his house. Additionally, he would like the City to repair his house.

Mayor Goode said that staff will meet with Mr. Coladonato on his property and see if a solution can be reached.

UNFINISHED BUSINESS

8. 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. (Postponed - 10/14/08)

Mr. Thomas said this is a unique opportunity to find a way to fund long overdue and critically important projects for our community – the south interchange/Ellis interchange and the St. Johns Heritage/Palm Bay Parkway – and in a manner with city governments partnering for the whole community. If constructed, the St. Johns Heritage Parkway and interchanges will benefit the City of Melbourne and all the citizens of South Brevard.

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In 2009 Congress will reauthorize funds for the U. S. Transportation Highways Program. Mr. Thomas reported that he and Palm Bay Council Member Milo Zonka share the belief that the St. Johns Heritage Parkway and the two interchanges are of national interest. This proposal will have no adverse affect on the Federal XU funding being banked by the Brevard Metropolitan Planning Organization for the Apollo bridge project in the City of Melbourne, which is a project that the City of Palm Bay fully supports. Any federal monies received through the Surface Transportation Act would be new money with no affect on committed projects like the Apollo bridge.

Mr. Thomas discussed how the Parkway will provide relief to Interstate 95 and the Ellis interchange will provide relief to Eau Gallie Boulevard and Highway 192. Access to Melbourne's large employers would improve. The south interchange, which will be located near Micco Road, will bisect the longest stretch of I-95 between Miami and Maine that doesn't have an interchange. Emergency response time will be significantly improved to the Interstate.

A joint workshop between Melbourne and Palm Bay would provide a forum to exchange views and work on this important issue of common interest. Working together would send an important, unified message to our elected federal representatives. Mr. Thomas informed Council that when Mr. Zonka presented this proposal to the Palm Bay City Council on August 16, they approved this initiative and formally announced their desire to jointly meet. He noted that the newspaper incorrectly reported that Melbourne also approved the proposal.

Moved by Thomas/Palmer to accept the proposal (in the agenda package) as written and to direct staff to coordinate with the City of Palm Bay following the upcoming election to schedule a time in mid-November for a joint workshop.

Mr. LaRusso said he watched Palm Bay's deliberation of this item on television. There was a lot of discussion about including other entities that have no representation in Washington. Mr. LaRusso asked Mr. Thomas how he feels about other entities participating in this effort.

Mr. Thomas replied that the intent is to initially include Melbourne and Palm Bay. Other municipalities could get involved as we get further down the road. Additionally, he pointed out that Melbourne and Palm Bay are the two cities funding lobbyists.

Mrs. Corby asked if this would be a state, county or city road.

The City Manager reported that he and the managers from Palm Bay and West Melbourne met with the County Manager last week to sort through some of the issues involved with the Parkway. All parties agreed to engage a separate attorney and engineering firm to move toward uniformity of design standard, acquisition, method, etc. Ultimately it would be a County road, but the County is interested in design standards so that the Parkway doesn't look like an urban street.

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Mrs. Corby stated that although she supports the Parkway project and believes it would be great for the community, she would rather focus on the maintenance of the roads we have now. The City is now resurfacing barely two miles of roads per year.

Council Member Cheryl Palmer pointed out that the funding Mr. Thomas is seeking wouldn't be available to resurface and maintain current roads. The proposed projects would have a positive effect on our local roads because of usage that would transfer to the Parkway. Mrs. Palmer added that she supports staying ahead of the game with our transportation projects.

Mr. Contreras agreed with Mrs. Palmer and noted that a parallel effort would be for the greater good. Mayor Goode commented that this would be a road of regional impact.

The question was called. Motion carried. Mrs. Corby voted nay.

NEW BUSINESS

9. COUNCIL ACTION RE: Contract award for the Edgewood Ditch Erosion Control, Project No. 20308.

City Engineer Jenni Lamb announced that the City is very fortunate the U.S. Department of Agriculture (USDA), Natural Resource Conservation Service has included the City of Melbourne in part of their Emergency Watershed Protection Program. The USDA has identified three projects in the City worth approximately \$2.75 million and intends to fund 75% of those projects.

The Edgewood ditch erosion control project is one of the projects. It will receive \$1.4 million in funding from the USDA. Because this was not identified in the budget, additional funding is needed. Following Tropical Storm Fay, portions of Edgewood were washed out and a guardrail was left hanging in the air. Another storm would probably result in the same.

Mrs. Lamb read the recommendations (outlined in a memo to Mayor and Council following distribution of the agenda report):

- Award of construction contract to Melvin Bush Construction, Inc. of Port St. Lucie, FL in the amount of \$1,725,203.69.
- Budget transfer from the Downtown Retrofit Project (20107) to the Edgewood Ditch Erosion Control Project (20308) in the amount of \$300,000.
- Budget transfer from the Swift Street Drainage System Project (20002) to the Edgewood Ditch Erosion Control Project (20308) in the amount of \$4,281.
- Appropriation from the Stormwater Utility Reserve – Future Projects Fund (58200541-590340) to the Edgewood Ditch Erosion Control Project (20308) in the amount of \$105,660.

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Mrs. Lamb pointed out that the Downtown Retrofit Project discharges stormwater into the same system. Although it appears money is being pulled from one project to another, it is being used for the same water body.

Mr. LaRusso commented that the City is fortunate to be in contention for these funds due to the leadership and expertise in Engineering.

Moved by Meehan/Contreras for approval as recommended. Motion carried unanimously.

10. COUNCIL ACTION RE: Contract award for the North-South Terminal Canal Erosion Control, Project No. 20103.

Mayor Goode stated that at the request of staff, this item has been postponed.

Mrs. Lamb added that the grant for this project was \$850,000, but the bids came in for almost double that amount. She spoke with a representative from the USDA who recommended that the City proceed with half the project, which means complete the project from Florida Avenue as far north as possible. Staff has to make some calculations and we need to see if the contractor would be willing to do half the job. In the meantime, staff is working with representatives from Washington to see if additional funding can be found for the entire project.

In response to Mrs. Corby, Mrs. Lamb confirmed that the City would still be within the grant timeframe.

11. COUNCIL ACTION RE: Supplement No. F045 to the Continuing Consultant's Contract for engineering services to provide for final engineering design for the South Sarno Drainage Area Improvements, Project No. 20105, Frazier Engineering, Inc., Melbourne, FL - \$129,000.

Mrs. Lamb was available for questions. She confirmed for Mrs. Corby that this is a flood control and water quality project.

Mrs. Corby noted that this is part of the Evergreen property that the City purchased with joint funding from the St. Johns River Water Management District. Mrs. Lamb replied yes and added that SJRWMD deeded the property with the condition that construction begin within three years.

Following brief discussion, Mrs. Lamb confirmed that the City will meet its construction deadline.

Moved by LaRusso/Contreras for approval of Supplement No. F045 to Frazier Engineering, Inc. for the South Sarno Drainage Area Improvements Project No. 20105 in the amount of \$129,000. Motion carried unanimously.

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12. CONSENT AGENDA:

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

- a. Approval of a modification to the construction contract for the new City Hall for owner-requested additions, Project No. 10504, Certified General Contractors, Inc., Melbourne, FL - \$42,642.51; and transfers of \$19,914 from 2005 Bond Interest Proceeds and \$19,914 from 2006 Bond Interest Proceeds; and \$2,815 from Water & Sewer Miscellaneous Projects to supplement this project budget.
- b. Approval of a Landscape Construction and Maintenance Memorandum of Agreement between the State of Florida Department of Transportation and the City of Melbourne for Eau Gallie Boulevard landscaping improvements.
- c. Approval of an amendment to the banking services contract with SunTrust Bank at the unit prices/rates quoted in their contract with the City of Ocoee and authorization for the City Manager to execute the amendment.
- d. Approval of an annual contract for basic software/maintenance for the Police Department, Tiburon, Inc., Pleasanton, CA - \$91,266.
- e. Continuation of the wireless data communication services contract for the Police Department, Verizon Select Services, Inc., Irving, TX - \$72,387.59 for an eleven-month contract period of November 1, 2008 through September 30, 2009.
- f. Approval of a blanket purchase order for annual legal and display advertisements, Cape Publications, Inc., Melbourne, FL - \$50,000.
- g. Purchase of 26,400 pounds of Hychem LC-214-PWG Dry Polymer for the Lake Washington Surface Water Treatment Plant, LeahChem Industries, Inc., Titusville, FL - \$47,784.
- h. Purchase of Novell software licenses and maintenance, Viable Solutions, Inc., Orlando, FL - \$42,222.
- i. Purchase of annual Novell NetWare, GroupWise, and ZenWorks support service, Viable Solutions, Inc., Orlando, FL - \$38,610.
- j. Continuation of the MUNIS operating system database administrative support contract, Tyler Technologies, Inc., Falmouth, MA - \$23,630.
- k. Blanket purchase order for waste disposal from Water Reclamation, Waste Management, Roll Off Division, West Melbourne, FL - estimated cost through September 30, 2009 of \$20,541.

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- l. Continuation of QWAVA, GWAVIX, Redline, and Reload licenses and maintenance software for email server monitoring and filtering, Viable Solutions, Inc., Orlando, FL - \$18,077.21.
- m. Continuation of the annual maintenance and support services contract for GIS software, ESRI, Redlands, CA - \$17,595.60.
- n. Approval of a Memorandum of Understanding between the City of Melbourne and the International Association of Firefighters to provide for pension benefit enhancements.
- o. Authorization for the City Manager to approve an Identity Theft Prevention Policy effective October 29, 2008.
- p. Resolution No. 3032: A resolution approving a Seventh Addendum to the Lease Agreement between Robert Scott Harrell and the City of Melbourne extending the lease until June 18, 2009 with the provision to extend the lease on a month-by-month basis through September 18, 2009 for property located at 912 East Palmetto Avenue at the monthly rental rate of \$1,175; and authorizing the City Manager to execute the addendum.
- q. Resolution No. 3033: A resolution supporting the inclusion of the widening of SR 528 (Beachline) in the Florida Department of Transportation 2035 Cost Feasible Plan for the Strategic Intermodal System.

13. ITEMS REMOVED FROM THE CONSENT AGENDA

None.

14. ORDINANCE NO. 2008-63 (A&V NO. 317): (First Reading/Public Hearing) An ordinance vacating the northerly 225± feet of an existing 50 foot wide right-of-way known as Kennedy Street. (Applicant - Brevard Neighborhood Development Coalition)

Attorney Gougelman read Ordinance No. 2008-63 by title. Staff was available for questions. There were no comments during the public hearing and no disclosures by Council.

Moved by Contreras/Meehan for approval of Ordinance No. 2008-63. Motion carried unanimously.

15. ORDINANCE NO. 2008-64, HOLY NAME OF JESUS CATHOLIC CHURCH: (First Reading/Public Hearing) An ordinance terminating an existing 20-foot wide Public Utility Easement at 3050 Holy Name of Jesus Drive, Indialantic; and authorizing the City Manager to execute the agreement.

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The City Attorney read the ordinance by title. Mrs. Lamb noted that recent utility upgrades to the site converted the water mains from public to private. The City no longer needs the easement.

There were no comments during the public hearing.

Moved by Palmer/LaRusso for approval of Ordinance No. 2008-64. Motion carried unanimously.

16. ORDINANCE NO. 2008-65, BABCOCK QUIZNOS: (First Reading/Public Hearing) An ordinance terminating an existing 20-foot wide Public Utility Easement at 4320 South Babcock Street; and authorizing the City Manager to execute the agreement.

Attorney Gougelman read Ordinance No. 2008-65 by title. Mrs. Lamb was available for questions. The following is an excerpt from the agenda report:

Staff is requesting that the easement be terminated so the City will not be responsible for maintaining a private sewer. The owner/developer also desires to terminate the easement.

There were no comments during the public hearing.

Moved by Thomas/LaRusso for approval of Ordinance No. 2008-65. Motion carried unanimously.

17. ORDINANCE NO. 2008-66, PORCELLA AVENUE: (First Reading/Public Hearing) An ordinance amending Chapter 28 of the City Code entitled "Streets, Sidewalks, and Other Public Places", changing the name of State Street to Porcella Avenue.

Attorney Gougelman read Ordinance No. 2008-66 by title. There were no comments during the public hearing. The following is an excerpt from the agenda report:

The "State Street" right-of-way was unused until three years ago and is now used as a driveway to Interstate Battery. A development is proposed to be located off of this right-of-way and an address must be established. Since "State Street" is in use elsewhere in Brevard County, the name must be changed to comply with the County's E-911 emergency response guidelines. The name "Porcella Avenue" was suggested by a Council Member and approved by Brevard County.

Moved by Palmer/Thomas for approval of Ordinance No. 2008-66.

Mrs. Meehan said that the agenda report does not indicate what Mr. Porcella has done to have a street named after him. She added that he has not served on City Council; therefore, there are other people who would qualify for this street naming.

Mr. Schluckebier deferred to the district Council Member. He noted that staff asked the district Council Member for input on the naming.

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Council Member Cheryl Palmer informed Council that in past years Mr. Porcella was very active in local politics. He is also considered a World War II hero and has a street named after him in France. Mrs. Palmer said she contacted Mr. Porcella about the idea and he was agreeable. She concluded by saying that if anyone would like to suggest another name, that's certainly an option; however, when she was asked, Mr. Porcella's name came to mind.

The question was called. Motion carried. (Mrs. Meehan voted nay.)

Without objection, Council convened as the Babcock Street Community Redevelopment Agency for the following item:

18. COUNCIL ACTION RE: Approval to establish a Facade Improvement Program within the Babcock Street Community Redevelopment Area, Project No. 18199; and transfer of \$60,000 from Project No. 14108 to provide funding for this program.

The Chairman of the Babcock Street CRA Advisory Committee was available for questions.

Moved by Meehan/Contreras for approval to establish a Facade Improvement Program within the Babcock Street Community Redevelopment Area, Project No. 18199; and transfer of \$60,000 from Project No. 14108 to provide funding for this program. Motion carried. (Mrs. Corby voted nay.)

Without objection, Council reconvened for the remaining agenda items.

19. COUNCIL ACTION RE: Pay adjustments for non-union employees.

Deputy City Manager Amy Elliott provided an overview. The following is an excerpt from the agenda report:

Because of budget constraints, staff recommends a combination of a lump sum payment and an across-the-board pay increase. This provides some immediate improved compensation to non-union employees and also provides a modest across-the-board wage increase consistent with the concept of across-the-board wage increases for the police and laborers unions. Additionally, providing a portion of the salary increases as a lump sum payment limits the fiscal impact of the wage adjustment on next year's budget.

Funding is provided in the City's fiscal year 2008-2009 budget for salary improvements for non-union employees. The following adjustments are proposed:

- *A \$450 lump sum payment effective the first paycheck in December 2008 for non-union permanent employees.*
- *A 1% across-the-board increase effective the first paycheck in January 2009 for non-union permanent employees.*

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This recommendation is an average wage increase of 1.68%, which is comparable to the average wage increase provided to the police officers of 1.69%. Providing a portion of the increase as a lump sum favors our employees with the lowest wage by providing an increase of 2.8%. This percentage increase declines as salaries increase over the pay scale to a low of 1.0%.

Mrs. Corby asked if management is included in the list of non-union employees and Mrs. Elliott replied yes.

Mrs. Corby asked what amount was budgeted for this. She added that she was under the impression that the City budgeted \$750 as a flat fee in the budget approved by Council. Mrs. Elliott replied that she doesn't recall the exact total budget amount; however, there was a certain amount of money budgeted that would accommodate what has been proposed.

Continuing, Mrs. Corby said she thought employees would be receiving a one time bonus, which would not be added to the base salary. She referenced the 1% across the board increase and stated that our employees are worth it and she wants to support them; however, the police contract that was just signed provides a \$750 flat fee and she thought this would be done across the board. Mrs. Corby asked if the increase the police just received was retroactive from the previous year of not having a contract.

Mrs. Elliott replied that the retroactive adjustment was 5% across the board. Beginning October 1 of this current fiscal year, police agreed to a \$750 across the board increase in wages. It was not a lump sum payment, but rather an increase in their base pay.

Mrs. Corby asked the difference of waiting three months to start the increase in January. Mrs. Elliott explained that the significance is the total amount of budget funds that are available. This option of providing a portion as a lump sum and a portion as a cost of living increase actually favors our lower end employees. On average, it's a 1.68% increase, but for employees at the lower end of the pay scale, it results in a 2.8% increase. The increase declines for the higher end employees, down to 1%.

Mrs. Elliott continued and stated that this method provides a fair wage increase, provides a little more for our employees at the lower end of the pay scale, and provides an immediate cash improvement. Waiting until January to start the 1% across the board increase allows for a larger lump sum payment. And, the larger lump sum payment benefits the lower end employees by giving a higher total effective wage increase for the year.

Mrs. Corby pointed out that the 1% at the lower end \$40,000 employee as opposed to an employee earning \$150,000 is a significant difference. The City has a wage gap problem. She recommended this be worded in such a way to take care of the lower end employees. Mrs. Corby stated that the management team of this City makes a very nice salary and given the fiscal restraints we have right now, she cannot support this. If

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anything, the City needs to start closing the 40% wage gap and she can't support this proposal if it includes the higher pay scale employees.

Mr. Contreras asked if the proposal exceeds the amount budgeted this fiscal year and Mrs. Elliott replied no.

Mrs. Elliott confirmed for Mrs. Corby that the amount proposed is within the amount provided for in the budget for wage increases.

Mrs. Corby asked if this increase is cushioned in our budget. Mrs. Elliott replied that the wage proposal is funded in the budget. The City has sufficient funds to provide for the wage proposal presented. Mrs. Corby said that the City could have adopted a lower millage rate.

Mrs. Elliott reported that the budget contemplates having a wage proposal increase, which is what this is. The proposed budget based on the adopted millage rate supports this item.

Moved by Thomas/Contreras for approval of a \$450 lump sum payment effective the first paycheck in December 2008 and a 1% across-the-board increase effective the first paycheck in January 2009 for non-union permanent employees. Motion carried. (Mrs. Corby voted nay.)

20. COUNCIL DISCUSSION RE: Vacant and abandoned properties; mortgage foreclosures, and Code enforcement.

Attorney Gougelman provided an overview. The following is an excerpt from the agenda report:

At previous meetings, Council Members have raised concerns about properties that have gone into foreclosure, become vacant and fallen into disrepair. The primary concerns relate to an increase in code enforcement attention and that blight conditions could adversely affect property values. One of the primary problems is that property in foreclosure is difficult from a code enforcement standpoint. Mortgage holders have less interest in maintaining properties in foreclosure than do property owners who live on site. Also, it is difficult to deal with large mortgage companies with huge numbers of properties in foreclosure. Merely finding the mortgage company's contact person who has authority over the foreclosed property is sometimes difficult.

The City Attorney has recommended five proposals and is seeking direction from the City Council on whether there is interest in pursuing some of these initiatives. The proposals include:

Proposal #1 – *Establish by ordinance a requirement that mortgage holders preparing to foreclose a mortgage must register with the City. The proposed ordinance would also provide enhanced requirements for mortgage companies to perform maintenance and*

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security on abandoned or vacant properties subject to foreclosure. The program is intended to deal with properties that could create neighborhood blight.

Prior to issuing a notice to the property owner of default on the mortgage and monthly thereafter, the lender would be required to inspect the property to determine if it is vacant. If the property is vacant, the lender must register the property with the City as abandoned property.

Failure of the mortgagee to maintain the property in accordance with the basic requirements constitutes a violation of the ordinance, subject to citation of City Code by the City's Code Enforcement staff. Abandoned properties would be required to be posted to reflect the contact information for a mortgage company's local property manager. Mortgagees would also be required to secure and inspect the property such that the property is not accessible to unauthorized persons.

The ordinance would cut down on wasted staff time hunting for the property managers of mortgage companies. It would make it easier to enforce lot maintenance requirements, because the City would know who is the mortgagee and the mortgagee's local contact person. Also, the City Code Compliance Division would receive notice of a foreclosure prior to the foreclosure being commenced. If a mortgagee failed to comply, it would be in immediate code non-compliance, and prosecution would be quicker.

Proposal #2 - *Establish an ordinance permitting temporary repairs for security or life safety violations. The ordinance would also allow assessments of private properties for emergency repairs made. This ordinance would allow emergency repairs to abandoned or vacant properties that involve life safety code violations or similar types of violations. The types of repairs involved would include, but not be limited to, properties with broken fences around swimming pools that present easy access to swimming pools by neighborhood children; unstable electrical conditions; homes with broken doors and windows that are unsecured that allow potential use by transients.*

The City currently has an ordinance that permits lot mowing of private properties that are overgrown and unsightly, but surprisingly, there is not a program that allows the City to undertake emergency repairs affecting security of a property or neighborhood, endanger a home, or repairs to comply with the life safety code. The program would authorize assessments for the repairs made if the property owner is unable or unwilling to undertake maintenance and repairs.

Proposal #3 - *Establish "super-priority" status for code enforcement board liens against future mortgages. When a code enforcement board finds that a property is in violation of the code, a fine is assessed. The code enforcement board order is recorded in the Public Records of Brevard County, and the order becomes a lien against the property, until the property is brought into compliance and the fine is resolved.*

When a bank has a mortgage that was recorded prior in time to a code enforcement order/lien and the bank forecloses its mortgage for non-payment, the code enforcement order/lien is extinguished, the property is no longer required to be brought into

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compliance, and the City is unable to levy the fine. The only way that the City can obtain compliance is to start the code enforcement process all over, wasting taxpayer dollars and staff time and delaying successful code enforcement. In the meantime, nearby residents are usually upset, because it appears that the City is doing nothing to resolve the problem.

The City Attorney is recommending adoption of an ordinance, which makes a code enforcement board order/lien superior to all mortgages, no matter when the mortgage is recorded. This puts a code enforcement board order/lien on a parity similar to a property tax lien.

Proposal #4 – *Actively enforce and foreclose on code enforcement board liens. Historically, the City has not foreclosed on properties in order to enforce code board liens. Initiation of foreclosure proceedings might be a method by which the City could bring further pressure to bear on code violators to bring their property into compliance.*

The City Council has several alternatives, including an aggressive code lien foreclosure process, or continuing the present policy of not enforcing code liens, or examining code liens in a more deliberative way and initiating foreclosure of the liens after a case-by-case analysis. The City Attorney recommends the third alternative – examining code liens in a more deliberative way and initiating foreclosure of the liens after a case-by-case analysis.

He points out that lien foreclosure would be handled in-house by the City Attorney's Office staff, and court costs would amount to approximately \$500 per foreclosure.

Proposal #5 – *Continue to seek funding under the Housing and Economic Recovery Act. Council member Joanne Corby noted that the Foreclosure Prevention Act of 2008 might make some monies available to the City to assist citizens whose homes were in foreclosure. The City Attorney notes that the Housing and Community Development Department has been monitoring this situation. The City of Melbourne has not yet received a direct distribution of such funds, although the State of Florida has received funds as of this date. The State of Florida has not yet released monies to the City of Melbourne. The City Attorney recommends continued monitoring by the Housing and Community Development Department in this matter.*

Mrs. Palmer referenced proposal #2 and asked if permitting temporary repairs is for vacant properties that have been foreclosed or for occupied properties where the City provides the mowing. Attorney Gougelman replied that it would be available in either circumstance. In the case of occupied properties, we would work with the property owner to gain compliance. If there is a life safety violation, staff would like the ability in truly exigent circumstances to take action.

Mrs. Palmer said that on the surface this sounds good; however, it looks like a slippery slope for the types of repairs, when the repairs will be made, and at what cost. She noted that she would like to see specifics on what items are considered dangerous. Obviously securing a pool is absolutely a danger, but beyond that it looks like a large bureaucratic expense – time wise and financially.

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Attorney Gougelman agreed and said those items will be flushed out once Council provides the okay to draft an ordinance. The ordinance would return to Council and be subject to public hearing.

Mrs. Palmer commented that she really likes the provision for posting the responsible party on vacant properties so that neighbors can make contact.

Mayor Goode pointed out that Council directed staff to provide this information because we are assuming that we will see an increase in the number of foreclosed properties. In his opinion, these are emergency type ordinances that will only be imposed on properties in this type of situation.

Mr. LaRusso referenced the ordinances being applied in an emergency environment and asked if they could sunset after a certain amount of time. Mr. Gougelman said that proposal #1 and proposal #2 could. He added that he would not recommend sunsetting for proposal #3 because it will take 8 – 10 years to see that ordinance yield some results. Making a Code Board lien super priority over and above an existing mortgage is a problem from a constitutional standpoint; therefore, the ordinance would only be applicable and enforceable against mortgages that come into existence after the ordinance is adopted.

Attorney Gougelman confirmed for Mr. Contreras that the ordinances will have more specificity when they return. Mr. Contreras recommended that since each has its various nuances, that they return with a matrix indicating what each does.

Mayor Goode said that the Chairman from the Code Enforcement Board, James Teele, is present.

James Teele, 2442 Empire Avenue, encouraged Council to take some type of action on this item because it has become a big problem with the Code Enforcement Board.

Mrs. Corby updated Council on the Federal Housing and Economic Recovery Act. She noted that Florida's allocation was \$541 million and out of that, \$91 million will be allocated to the small CDBG communities. Melbourne is an entitlement City; however, there is some gray area as to whether we will receive funds directly.

Continuing, Mrs. Corby said that taking action now would be a waste of time because with the distribution of funds, the City would be able to decide what its needs are in the community and allocate funds for those purposes. She cited examples of how funding could be used and added that she has examples from other cities.

Following brief discussion, Mrs. Corby said that HUD has 60 days to complete what the criteria will be for state distributions of the funds. She recommended that the City wait before proceeding with any of the proposals.

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Mr. LaRusso asked Mrs. Corby to clarify why she is recommending all five proposals be postponed. Mrs. Corby explained that, for example, proposal #1 is a moot point because there's no plan to address the data once it's collected. It's great that we can collect data, but we don't have the means in place to handle it. She added that her point is the City is going to receive money, although we don't know exactly what the distribution will be.

Mayor Goode pointed out that this has turned in to a debate without a motion on the floor.

Moved by LaRusso/Meehan for approval of Proposal Nos. 1, 2, and 3, directing the City Attorney's Office to prepare the appropriate implementing ordinances for City Council consideration; and initiating foreclosure of code enforcement liens on a case-by-case basis after deliberative staff analysis rather than an aggressive code enforcement lien foreclosure program.

Mrs. Palmer asked the maker/seconded to amend the motion by allowing Council to vote on the proposals separately. The maker/seconded agreed to amend the motion.

Mrs. Palmer addressed Proposal #1, which would require the lender to inspect the property, determine if it's vacant, register the property with the City if it is vacant, and post the company's local property manager information. She said that this was all she was looking for because it would allow the City to notify a specific person when a property needs to be boarded, the grass cut, etc. She commented that the other proposals go a little further than we need to go.

Mrs. Corby referenced Proposal #1 and pointed out that we don't have the staff to work with the data once it has been collected. We would be better off looking at the funds that are available and – just as an idea – allocating those funds to small businesses that take care of lawns. The monies are available to help local government take care of foreclosed properties. That includes rehabilitation, addressing safety issues, etc. As another idea, funding could be used for loan modifications. Banks would much rather have a home that is occupied and rework the loan to keep a person in the house. The City can't do that if the lender is out of state and doesn't even know that this ordinance has been passed.

Mr. LaRusso said the data being collected will reveal which lenders are located out of state. Additionally, he asked what course we take if the City doesn't receive those funds. Mr. LaRusso recommended that the City have a vehicle in place to start the process rather than waiting for funding. It protects the City and provides us with a tool. A dual protection will be in place. The City will be protected and residents located near foreclosed property will be protected from their neighborhood becoming blighted and an eyesore. He noted that this was his point from the very beginning. If data collection starts the process, then he's all for it. Additionally, he pointed out that the Chairman of the Code Enforcement Board recommended that Council take some action.

Discussion continued. Mrs. Palmer stated that these two ideas are not mutually exclusive. The City can still go after funding while gathering information about who's responsible for the property.

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The question was called on Proposal #1. The roll call vote was:

Aye: Contreras, LaRusso, Thomas, Palmer, Meehan

Nay: Corby and Goode

Motion carried.

Mayor Goode called the question on Proposal #2. Mrs. Palmer stated that she believes it is beyond the scope of the Code Enforcement Board, would be too costly and a burden on the City to effect. She recommended denial of this option.

The question was called on Proposal #2. The roll call vote was:

Aye: Contreras, LaRusso, Thomas, Meehan

Nay: Palmer, Corby and Goode

Motion carried.

Following brief discussion, the City Attorney confirmed for Mrs. Palmer that the ordinance for Proposal #2 will narrow the scope to vacant and abandoned properties rather than all properties in the City.

The question was called on Proposal #3. The roll call vote was:

Aye: Contreras, LaRusso, Meehan

Nay: Thomas, Palmer, Corby, and Goode

Motion failed.

The question was called on Proposal #4. The roll call vote was:

Aye: LaRusso,

Nay: Contreras, Thomas, Palmer, Corby, Meehan, and Goode

Motion failed.

Regarding Proposal #5, Mrs. Palmer asked who on staff is going to look into the Housing and Economic Recovery Act funding. The City Manager replied Housing and Community Development Director Melinda Thomas. Additionally, his office will also be involved.

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If Proposal #5 passes, Mrs. Palmer asked that Mrs. Corby be appointed to meet with Melinda Thomas and provide ideas for discussion along with return communication to City Council on the results of that meeting. Mr. Schluckebier replied that's fine.

Mrs. Corby agreed and added that criteria is being established for funding for the smaller entitlement cities. As part of that, a list of questions was sent out to the City Managers. She asked staff to provide her with the answers provided by the City of Melbourne. She added that they were pertinent questions and she would be willing to share them with Council if time is allotted.

Mrs. Palmer asked if Council was agreeable for Mrs. Corby to meet with Mrs. Thomas and Mayor Goode replied that it's done without objection.

The question was called on Proposal #5. The roll call vote was:

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

Nay: Goode

Motion carried.

21. COUNCIL ACTION RE: Board appointments

- a. Appointment of two members to the Beautification and Environmental Advisory Committee.

Moved by LaRusso/Meehan to reappoint Alexis Johnsten and Celeste Henry. Motion carried unanimously. Term: 11/10/2008 – 11/9/2011; 3-year terms

- b. Appointment of one regular member to the Code Enforcement Board.

Moved by Meehan/Thomas to appoint first alternate R. J. Durham as a regular member. Motion carried unanimously. Term: 10/28/2008 – 10/14/2011; unexpired 3-year term

Nominations were called for the alternate seat vacancy. Mrs. Meehan nominated Anna Cook. By consensus, nominations were closed. Mayor Goode announced that the motion to appoint Anna Cook by unanimous acclamation to the alternate member seat carried unanimously. Therefore, by consensus, Council appointed Anna Cook. Term: 10/28/2008 – 7/8/2011; unexpired 3-year term

- c. Appointment of one member to the Golf Courses Advisory Board.

Moved by LaRusso/Thomas to reappoint Penny Goode. Motion carried unanimously. Term: 11/9/2008 – 11/8/2011

22. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

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Pat Poole, 805 E. Palmetto Avenue, referenced the ordinance to rename State Street Porcella Avenue. Mrs. Poole provided some background information and noted that Mr. Porcella is a decorated hero from World War II.

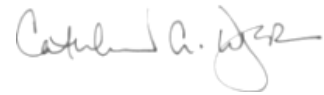
A brief discussion followed.

Mr. LaRusso reported that in the recent “Building a More Beautiful Brevard” contest, the Beverly Jean House at 1556 Highland Avenue won in the new structure category for South Brevard County.

23. ADJOURNMENT

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

The meeting adjourned at 8:40 p.m.



City Clerk – 11/6/2008

Approved by Council: _____