

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
NOVEMBER 25, 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
	John Thomas	Vice-Mayor, District 4
	Mike Nowlin	Council Member, District 1
	Mark LaRusso	Council Member, District 2
	Kathy Meehan	Council Member, District 3
	Molly J. Tasker	Council Member, District 5
	Joanne Corby	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Deputy City Manager
	Howard Ralls	Deputy City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. Proclamations and Presentations

None.

5. Approval of Minutes – November 5 Special Meeting and November 12 Regular Meeting

City Clerk Cathy Wysor referenced Item 25 of the regular minutes (Lucca Village site plan) and reported that condition “i” on Page 15 should be deleted (the applicant previously met that condition). Condition “i” was contained in an earlier Planning document; however, it was not part of the Planning Director’s memo to the City Manager in the November 12 agenda package.

Council Member Joanne Corby reminded staff that at the special meeting she requested cost information on the focus groups. She asked when Council would receive that information. Mrs. Elliott replied that staff does not have that information readily available. She confirmed it could be ready within 30 days.

Mrs. Corby asked when Council is scheduled to discuss the survey/focus group report again. Mayor Goode recommended that Council revisit this issue the first meeting in December 2009. Following brief discussion, Mrs. Corby said with new Council Members it would be helpful to have another workshop sooner than a year.

Moved by Corby/Nowlin to add the employee satisfaction survey/focus group report to a future agenda and include a report on the cost information. The roll call vote was:

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Aye: Nowlin, LaRusso, Meehan, Tasker, Corby, and Thomas

Nay: Goode

Motion carried.

Moved by Corby/Nowlin for approval of the special meeting minutes and the regular meeting minutes, with the correction to the regular minutes noted by the City Clerk. Motion carried unanimously.

6. City Manager's Report

***Housing and Economic Recovery Act Funding*** – City Manager Jack Schluckebier reported that under the Housing and Urban Development formula, Melbourne was to receive \$1.2 million; however, the State established a new funding floor of \$1.5 million. Melbourne has objected and we expect a final decision next week from the State of Florida. Mr. Schluckebier added that he believes the state will be sympathetic to lowering the number. City staff will continue working diligently on this issue over the next few business days. The City Manager informed Council that, due to Council Member Corby's affiliation with the Florida League of Cities Intergovernmental Relations Policy Committee, she has been involved with this effort.

***Joint Melbourne/West Melbourne Meeting*** – Following comments, Council removed January 28 and 29 from consideration. Mr. Schluckebier said that staff will work towards a meeting date that will suit the most people. He added that a shade meeting on litigation/strategy will likely be held prior to the December 9 meeting.

7. Public Comments

None.

UNFINISHED BUSINESS

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

The Mayor referenced the letter dated November 20, 2008 from Damon Kolb, Development Associate, The Richman Group of Florida, Inc., withdrawing the referenced site plan.

9. ORDINANCE NO. 2008-47, GENERAL EMPLOYEES' PENSION PLAN: (Second Reading/Public Hearing) An ordinance amending Chapter 23 of the City Code, Retirement and Pensions, Article VII, General Employees' and Special Risk Class Employees' Pension

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Plan, by closing the plan to new members and authorizing the transfer of funds to the Florida Retirement System. (Postponed - 9/30/08)

City Attorney Paul Gougelman read Ordinance No. 2008-47 by title. The following is an excerpt from the agenda report:

*This is the second reading of an ordinance to close the General Employees' and Special Risk Class Employees' Pension Plan (the "General Pension Plan") to new members effective August 1, 2008. Council previously adopted Resolution Nos. 2095 and 3005 providing notice of intent to reinstate membership in the Florida Retirement System (FRS) for employees covered by the General Pension Plan, authorizing current members of the General Pension Plan to elect to transfer to the FRS or to remain in the General Pension Plan, and further authorizing the past service cost to be transferred from the General Plan to the FRS for those members electing such a transfer. During the election, nearly 90% of the General Pension Plan members elected to transfer to the FRS. The General Pension Plan will remain in existence for those members who chose to remain in this plan.*

*This ordinance formalizes and incorporates into the City Code Council's previous direction with regard to the transfer of benefits from the General Pension Plan to the FRS for those members making such an election. The item was postponed to allow time for the Board actuary to complete the required actuarial impact statement (included in the agenda materials).*

Mrs. Corby referenced a newspaper report, which indicated that the FRS pension fund had lost \$37 billion. She asked if this will affect the City and the employees who opted to make the change. The City Manager replied that those accounts are established and protected under state law. The asset pool of the Florida Retirement System is among the best of all the state pension funds in the country. The market dropped in the past three months; however, there were steady gains over the past five to six years. FRS remains a very solid pension fund.

Regarding the General Pension Plan, Deputy City Manager Amy Elliott confirmed for Mrs. Corby that approximately 45 employees chose to stay with that plan. The City Manager added that the assets exceed the liabilities in that plan, which staff expects to continue.

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

Moved by LaRusso/Thomas for approval of Ordinance No. 2008-47. The roll call vote was:

Aye: Nowlin, LaRusso, Meehan, Tasker, Corby, Thomas and Goode

Motion carried unanimously.

10. ORDINANCE NO. 2008-21 (Z-2006-1080) AND ORDINANCE NO. 2008-22 (CU-2006-11)  
DAILY BREAD: Ordinances providing for a change in zoning on 0.37± acres and a conditional use with site plan approval to allow the development of a 9,193± square foot soup kitchen on 0.76± acres, located on the south side of Fee Avenue, east of Waverly

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Place, and west of Florida East Coast Railroad right-of-way. (Owner/Applicant - Daily Bread, Inc.) (Representative - Matt Soyka, Soyka Engineering, Inc.)

- a. Ordinance No. 2008-21/Z-2006-1080: An ordinance changing the zoning from C-1 (Neighborhood Commercial) to C-2 (General Commercial) on a 0.37±-acre parcel. (Denied - 5/19/08; motion to reconsider left pending; postponed - 9/16/08)
- b. Ordinance No. 2008-22/CU-2006-11/SP-2006-23: An ordinance granting a conditional use with site plan approval to allow the development of a 9,193± square foot soup kitchen on 0.76± acres.

The following is an excerpt from the agenda report:

*The Daily Bread submitted an application for redevelopment and expansion of its existing soup kitchen facility on the south side of Fee Avenue adjacent to the Florida East Coast Railway tracks. The application was considered by the City Council on May 19, 2008 after a six and one-half hour public hearing attended by almost 600 people.*

*Soup kitchens are permitted as a conditional use in the C-2 zoning district. The Daily Bread's existing site is zoned C-2, but the adjacent expansion parcel is zoned C-1. Soup kitchens are not permitted in the C-1 zoning district.*

*The Daily Bread submitted an application for rezoning of a .37±-acre parcel at the intersection of Fee Avenue and Waverly Place from C-1 to C-2. In addition to the rezoning application, the Daily Bread requested the issuance of a conditional use for a soup kitchen and site plan approval on a .76±-acre parcel. The applicant also submitted a proposed binding development plan with a security plan. The binding development plan includes conditions further restricting the use of the property.*

*The agenda package contains a memorandum from the City Attorney, which traces the history of these applications. His memorandum also outlines some of the legal implications of the Council decision-making.*

*At the completion of the public hearing, Council Members Meehan/Thomas moved to deny Ordinance No. 2008-21 (the rezoning ordinance). This motion passed by a four to three vote. No vote was taken on the conditional use and site plan because approval could not legally be granted without the rezoning. Following the vote on the rezoning application, Goode/LaRusso moved to reconsider (the vote by which the rezoning failed) and leave pending.*

*Consideration of the motion to reconsider has been delayed several times. By leaving the motion to reconsider pending, the Daily Bread had an opportunity to consider its options and to explore the possibility of moving to another site. The City worked with the Daily Bread to examine various alternative sites for operation inside the City limits. It remains unknown what option remains to them for sites outside Melbourne.*

*The recommendation is to:*

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1. *Deny the motion to reconsider the vote by which Ordinance No. 2008-21 failed, or alternatively agree to withdraw from further consideration the motion to reconsider the vote by which Ordinance No. 2008-21 failed.*

2. *Deny Ordinance No. 2008-21 (Z-2006-1080) to rezone a .37±-acre parcel at the intersection of Waverly Place and Fee Avenue for the following reasons:*

- *The rezoning application is inconsistent with the City's Comprehensive Plan Future Land Use Element Objective 1 and Policies 6(e), (f), and (g).*
- *The rezoning will have an adverse affect on the subject property and surrounding properties, because it will allow a higher intensity commercial use than should be permitted in a mixed use residential/low intensity commercial area. See Art. IX, §1(A)(2)(b), Appendix B, Melbourne City Code.*
- *C-2 zoning is appropriate for major commercial centers and is not appropriate for the interior of a residential mixed use area. See Art. III, §2(N), Appendix B, Melbourne City Code.*

3. *Deny Ordinance No. 2008-22 (CU-2006-11/SP-2006-23) for a soup kitchen, based on the following reasons:*

- *The conditional use request and site plan application are inconsistent with the City's Comprehensive Plan Future Land Use Element Objective 1 and Policies 6(e), (f), and (g).*
- *The conditional use request and site plan application fail to satisfy the requirements for a soup kitchen as set forth in Appendix B, Article VI, Section 2(N), City Code, as outlined by Planning & Economic Development Director Cindy Dittmer at the May 19, 2008, public hearing.*
- *A conditional use for a soup kitchen is not permitted in the C-1 zoning district. See Art. V, §2, Table 1B, Appendix B, Melbourne City Code.*

Note: In addition to the correspondence in the agenda package, Mayor and Council received the following correspondence: Letter dated November 20 from Paul Kantz, President, Board of Directors, Daily Bread, encouraging Council to approve the original plan; email dated November 22 from Rob Downey encouraging the new members of City Council to perform necessary research to make an informed decision; correspondence received November 24 from John Farrell providing background information on the Daily Bread and outlining the steps that have been taken to find a new location; email dated November 24 from Jack and Denette Schweikert, 2260 Front Street, expressing support for moving Daily Bread out of the Downtown area and expressing opposition to its expansion; telephone message dated November 24 from Agnes Cooper reporting criminal activity at the Melbourne Cemetery by people she believes to be Daily Bread patrons; email dated November 24 from Joyce and Harold Parten, asking Council to help Daily Bread find a

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permanent location to expand; and email dated November 25 from Frank Wolking, 612 East Lincoln Avenue, expressing opposition to the expansion of Daily Bread.

Mayor Goode reported that while the item has been postponed he, along with City staff and representatives from the Daily Bread, looked at various sites. Unfortunately, the Daily Bread has not come to any closure. The Mayor stated that he is prepared to withdraw his motion to reconsider and asked if the seconder (LaRusso) would also agree to withdraw the motion.

Council Member Mark LaRusso declined to withdraw his second to the motion to reconsider and leave pending.

Moved by Goode/Meehan to withdraw the motion (to reconsider and leave pending).

Attorney Gougelman asked Council Members Nowlin and Tasker if they have had an opportunity to review the record, the evidence and listen to the audio recording from the May 19 meeting. Council Member Mike Nowlin replied that he has reviewed all the items from the special meeting, including the recording, and is familiar with what has happened. Council Member Molly Tasker replied that she has also reviewed the history of this item and the recording.

Mr. LaRusso pointed out that if Council denies the request, the City will not have a chance to influence the outcome of this project. Daily Bread will refurbish the kitchen and build a new facility next door that complies with existing zoning. At that point, the City will lose the security plan. Mr. LaRusso encouraged Council to take control of this project and not allow it to be built without a security plan.

Mr. Nowlin said he views Daily Bread as a business, even though it is a not-for-profit business. As a business, he is not sure how involved the City needs to be.

Mrs. Corby asked the City Attorney if the motion on the floor (to withdraw the motion to reconsider and leave pending) is legal. Attorney Gougelman replied that he believes it is. The ostensible purpose of the motion is to reach the same point that would be reached if Council voted on the motion to reconsider.

A brief discussion followed on the process. Mrs. Corby expressed concern that from May until now the City went through the motions of reconsidering, although we are not reconsidering. Mayor Goode took exception and said he has had meetings, taken representatives to various sites, etc. Mrs. Corby clarified that her comment was not directed towards the Mayor.

Continuing, Mrs. Corby said that this issue is not about a building, feeding the hungry or a social issue. It is a political issue. She commented that she does not know if Daily Bread is getting the job done; however, she does not believe the problem will be solved by expanding or, alternatively, by doing nothing. Mrs. Corby concluded by asking when Council will say enough and try to fix the problem.

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Mrs. Tasker said that in her view Council has to decide a zoning and Comprehensive Plan question; the problem will exist regardless. The change of zoning is not the correct vehicle to solve the hunger problem and Council needs to make its decision more narrowly regarding the zoning.

Continuing, Mrs. Tasker asked about the zoning for soup kitchens. Planning and Economic Development Director Cindy Dittmer said that soup kitchens are a conditional use allowance in C-2, M-1, M-2 and I-1 zoning districts. Mrs. Tasker said she would like to see a map of where the Daily Bread might relocate according to zoning. Mrs. Dittmer said that map was prepared as part of discussions with representatives from Daily Bread.

Mrs. Tasker said that she would like to see the Daily Bread form a coalition with other non-government organizations to provide services. The City can neither carry all of this on its own nor should it. She added that she doesn't believe increasing a service by 50% in a mixed residential/commercial neighborhood serves the greater purpose. Regardless, the rezoning is not the correct vehicle for solving the problems of the hungry.

Mr. LaRusso asked if disclosures are required on this item and Attorney Gougelman replied yes.

Mr. LaRusso disclosed that he returned a phone call today from Pat Poole and they discussed the Daily Bread in general.

Council Member Kathy Meehan said that on May 21, 2008 Susan Craft asked her to vote no on the expansion. On June 11 she met with Hamilton Boone who provided her with a copy of the "Save Our Streets Coalition" report. Mr. Boone discussed locations of homeless camps in the City, the number of arrests at the Daily Bread and crime statistics for the area. On August 24 she attended a neighborhood cookout on Lincoln Avenue. Many of the neighbors living on the street are opposed to the expansion. The residents are not against feeding the homeless; however, they are opposed to crime associated with the facility.

Mrs. Meehan said that on November 18 an unidentified caller left the following message on her answering machine: "I hope you don't have to go hungry." On November 24, she received a call from Patti Walsh, the coordinator of crime watch on Lincoln Avenue. Ms. Walsh lives within 500 feet of the Daily Bread. Further, Ms. Walsh reported that Mr. Farrell asked her to speak in favor of the expansion and indicated that he can't control what happens after 3:00 p.m. when the Daily Bread closes. Ms. Walsh stated that Daily Bread is a magnet for people to commit crimes in the neighborhood; she has not seen mothers and children at the facility, only drug dealers, addicts and prostitutes; and she is concerned with the increase in crime in her neighborhood.

Vice Mayor John Thomas reported that he spoke with John Farrell on November 19 about numerous alternatives and issues pertaining to the Airport. Mr. Farrell asked Mr. Thomas to consider supporting the project.

Mrs. Tasker said that on November 24 she spoke with John Farrell. He discussed the history and problems they encountered while trying to expand. No new information was

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provided. On November 24 she received a call from Pat Poole; however, she was not available to take the call.

Mrs. Corby disclosed that on November 19 she received a call from John Farrell asking for her support. Mr. Farrell informed her that the Airport Authority had denied the Airport property and he said the purpose of the call was to keep her informed. Mrs. Corby said she asked Mr. Farrell if Daily Bread had looked at other locations outside of Melbourne for relocation and he replied no. Mr. Farrell concluded the conversation by asking for her support.

Mayor Goode said that at the November 19 Airport Authority meeting he spoke with Mr. Farrell about a procedural question.

Mrs. Meehan stated that she is not against feeding the hungry and homeless, and she respects the mission of Daily Bread. The conceptual plan is great, but not at the Fee Avenue location. It is inconsistent with the City's Comprehensive Plan. The residents and property owners who live within 500 feet of the facility are opposed to the rezoning. Daily Bread has not been a good neighbor and has become a magnet for loitering, noise, littering, prostitution and other criminal activity. Mrs. Meehan encouraged the representatives from Daily Bread to reconsider the Harper Road site. She also recommended that they work with Brevard County and pointed out this is a countywide challenge – not just a Melbourne issue.

Mrs. Corby agreed that government needs to allow the business to do its job; however, she doesn't believe the job is getting done. In 1992 Daily Bread started by serving 70 meals. That number has risen to 250 and it's been reported that isn't enough. Other cities want Melbourne to approve this because they don't want to get involved and they don't want Daily Bread located in their city. Mrs. Corby stressed that we've spent so much time worrying about the building and the location that we've forgotten the purpose. Feeding the hungry shouldn't be neglected because of administrative burdens and isolating the distribution to one building is not the answer.

Mrs. Corby concluded by saying we need to look into collaborating with other services being provided. And, she will support the motion because the alternative isn't getting us anywhere.

Following brief discussion, Attorney Gougelman said the recommended motions in the agenda package – if passed – will make it clear procedurally that Council is closing the books on this property.

Mr. Thomas asked how Council will proceed on the two ordinances if the motion on the floor fails. Attorney Gougelman replied that Council would have to dispose of the motion to reconsider.

Mr. LaRusso said he tried to make this into a business proposition. The buildings will go up and the City will have no influence. At this point, the City has the opportunity to further tweak the security plan.

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The question was called on the motion to withdraw the motion to reconsider. The roll call vote was:

Aye: Nowlin, Meehan, Tasker, Corby, Thomas and Goode

Nay: LaRusso

Motion carried.

Moved by Goode/Meehan to deny Ordinance No. 2008-21 for the second time with the objections as listed in the package.

For the record, Attorney Gougelman read the reasons for denial (outlined at the beginning of this item).

The roll call vote was:

Aye: Nowlin, Meehan, Tasker, Corby, Thomas and Goode

Nay: LaRusso

Motion carried.

For the record, Attorney Gougelman read the reasons from the agenda package (outlined at the beginning of this item) that denial of Ordinance No. 2008-22 is being recommended. Moved by Goode/Meehan to deny Ordinance No. 2008-22 based on the reasons stated by the City Attorney. The roll call vote was:

Aye: Nowlin, Meehan, Tasker, Corby, Thomas and Goode

Nay: LaRusso

Motion carried.

Mrs. Tasker expressed doubt that Daily Bread would attempt to coerce the City Council into adopting an ordinance by threatening to be an irresponsible business entity. She added that she believes Daily Bread will attempt to work further with other non-governmental organizations, Brevard County, etc. on this issue.

Recessed: 7:22 p.m.

Reconvened: 7:28 p.m.

11. ORDINANCE NO. 2008-67 (CU-2008-07) RISING STARS ACADEMY: (Second Reading/Public Hearing) An ordinance granting a conditional use to allow a private school on a 0.15±-acre developed parcel zoned R-P (Residential Professional), located on the south side of Sarno Road, west of Croton Road, and east of Cronin Avenue. (Owner - Reyburn and Patricia Campbell) (Applicant/Representative - Roni and Art Stockdale) (First Reading - 11/12/08)

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Attorney Gougelman read the ordinance by its title. There were no disclosures by Council and no comments during the public hearing.

Moved by LaRusso/Nowlin for approval of Ordinance No. 2008-67 based on the findings and conditions contained in the Planning and Zoning memorandum. The roll call vote was:

Aye: Nowlin, LaRusso, Meehan, Tasker, Corby, Thomas and Goode

Motion carried unanimously.

12. COUNCIL ACTION RE: Purchase of 130 pairs of Pro Warrington Model 5006 structural fire fighting boots, Fisher Safety, Orlando, FL - \$35,620. (Postponed - 11/12/08)

Mayor Goode summarized the item. The following is an excerpt from the agenda report:

*This item was postponed at the November 12, 2008 meeting to allow staff time to research pricing. The agenda materials include a memo from Assistant Fire Chief Greg Anglin reporting on the three vendors identified by Council Member Corby at the November 12 meeting. He reports that two vendors quoted prices higher than the \$274 recommended per unit price and the third vendor has disconnected the phone and is not accepting orders. Also included is a memo from Purchasing Manager Dave McCue explaining the purchasing requirements as provided in the Melbourne City Code in general as well as the research performed on this specific item before the final purchasing recommendation was made.*

*Based on this information, staff recommends proceeding with the award of bid as initially recommended to piggyback the Orange County, FL contract and purchase 130 pairs of Pro Warrington Model 5006 structural fire fighting boots from Fisher Safety, Orlando, FL at a per unit price of \$274 for a total cost of \$35,620.*

Mrs. Corby stated that her issues with this item relate to budgeting, the lowest price, and the City's bidding process. Mrs. Corby pointed out that purchase of the boots is not on this year's or last year's capital outlay schedule. Assistant Fire Chief Anglin replied that boots are not considered a capital purchase. A capital purchase involves an item that costs \$1,000 or more.

Mrs. Corby reported that the 130 pairs of boots include (three pair for employees who haven't been hired yet and one spare). She questioned if the City is going to start buying equipment for people who aren't employed yet.

Continuing, she said that she asked staff whether this was a need or a want item. She would like for our Fire Department to be well equipped; however, in this fiscal time we don't need to be operating in a "want" mode. Mrs. Corby asked Assistant Chief Anglin if he was still set on 130 pairs of boots.

Mr. Anglin explained that each employee has one set of boots. If the boots are damaged or destroyed, there is not backup, which would allow the employee to immediately return to work. The second issue involves an industry standard where boots should be replaced

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every three to five years depending on the use. The current boots were purchased more than five years ago.

Mrs. Corby asked when this model of boot came out. Chief Anglin replied he does not know. Mrs. Corby said 2006. She added that this is the brand new Cadillac of boots. Chief Anglin pointed out that this is not the most expensive boot available; however, it is a good boot.

Regarding lowest price, Mrs. Corby said that there is only one vendor in this area that can provide this merchandise. Other vendors are not able to offer the boots at a discount because there appears to be a dealer of record for the Fire Department. Mrs. Corby pointed out that this removes the bidding process and the ability to obtain the lowest bid. She added that she spoke with several vendors throughout the United States, and they all indicated the price of the boot is \$235. When asked if they could offer that price to the City, they all said they can't because the vendor has a lock in this area.

Mrs. Corby asked why Council wasn't provided with a copy of the bids obtained by Orange County. She questioned the field testing process and said that Council should have been provided with a report. And, she noted that the union contract does not specify this particular brand of boot. She concluded by asking Council to consider not doing business with companies that have a lock or block on the market.

Mrs. Corby moved to "look at not purchasing all 130 boots." Mayor Goode said that the motion needs a specific number. Mrs. Corby moved to "not purchase all 130 boots." The Mayor asked how many pairs the City should purchase; staff needs authorization. Mrs. Corby said that nine people on the list received boots in the last year. The Mayor stated that the Purchasing Division needs to know how many pairs of boots will be purchased. Mrs. Corby said she doesn't believe Council has the right number to make this decision; therefore, she moved to "not purchase the 130 boots." Mayor Goode asked if this means none. Mrs. Corby said she would like staff to do its job.

Mayor Goode asked if there was a second to the motion. There was no response from Council.

Mr. Thomas asked Mr. Anglin, based on his research, if the City can get a better boot from a different manufacturer for a better price. Mr. Anglin replied no.

Moved by Thomas/Meehan for approval as recommended.

Mrs. Corby stated that the response was based on opinion. She added that we need staff to do its job. Mayor Goode called Mrs. Corby out of order.

Mr. Nowlin asked how many pairs of boots have to be replaced each year due to damage. Chief Anglin replied 10 – 20%. He added that it usually takes about six weeks to replace a pair of boots, depending on the size.

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

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NEW BUSINESS

13. COUNCIL ACTION RE: Continuation of the Unidirectional Flushing Program.
- a. Change Order No. 2 to Service Agreement No. 08-095-0-2007 for additional Water Distribution System Flushing Services, Project No. 35708, Wachs Valve & Hydrant Services, Lincolnshire, IL - \$17,535 (15 zones at \$1,169/zone) and a six-month increase in contract duration (August 21, 2009).
  - b. Change Order No. 2 to Service Agreement No. 08-094-0-2007 for additional Locate, Inspect, and Test Valves & Hydrants services, Project No. 35608, Wachs Valve & Hydrant Services, Lincolnshire, IL - \$146,360; a 10-month increase in contract duration (August 21, 2009); and transfer of \$84,036 from Water Distribution Flushing (Project No. 35708) to supplement this project budget.

Assistant Public Works Director Harold Nantz was available for questions.

Moved by Meehan/Tasker for approval of Item “a” as recommended. Motion carried unanimously.

Moved by Tasker/Meehan for approval of Item “b” as recommended. Motion carried unanimously.

Mr. Nowlin noted that the City has a fire hydrant flushing crew. He asked if this crew will be proactive once the flushing project is complete. Mr. Nantz explained that there is a 30- to 50-year buildup in the system. Once the project is complete, City crews will be able to step in and flush about 20% of the zones per year.

The question was called. Motion carried unanimously.

14. COUNCIL ACTION RE: Contract award for Lipscomb Park Phase 2 Improvements, Project No. 00107, Joyal Construction, Melbourne, FL - \$510,000; and transfers of \$35,100 from 2004-05 Lipscomb Park Fountains (Project No. 00105); \$30,202 from Lipscomb Park Phase I (Project No. 00106); \$62,342 from CDBG Miscellaneous Projects (Project No. 00199); and \$8,190 from Booker T. Washington Lighting (Project No. 00305) savings to supplement this project budget.

City Engineer Jenni Lamb was available for questions. She responded to general questions about the bidding process, the project, and the funding.

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

15. CONSENT AGENDA:

Note: With regard to Item “k”, City Council received a copy of the final memorandum prior to the meeting. A draft was included in the agenda package in error. The scope of work will include a magnetometer in the Council Chamber lobby; bullet-resistant Council dais millwork; and an elevator security package.

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The Mayor announced that Council Member Nowlin removed Items “c” and “k” from the consent agenda. Moved by Thomas/LaRusso for approval of the consent agenda, with the exception of Items “c” and “k.” Motion carried unanimously.

- a. Change Order No. 1 to the contract for Country Road Annexation Waterline Extension, Project No. 30507, Don Luchetti Construction, Inc., Melbourne, FL – net decrease of \$61,956.
- b. Contract award for South Patrick Drive Waterline Relocation between Desoto Parkway and Sable Palm Lane, Project No. 30003, Young’s Communication Company, Inc., Melbourne, FL - \$29,995.
- c. Contract award for signalization rehabilitation at A1A and Paradise Boulevard, Traffic Control Devices, Inc., Altamonte Springs, FL - \$20,576.52. (See next agenda item for action.)
- d. Approval of a Temporary Fire Protection Agreement for Shopping Center between Melbourne 95 New Haven, LLC and the City of Melbourne to provide a temporary fire flow to the Coast Commerce Center during construction; and authorization for the City Manager to execute the agreement.
- e. Approval of a Disaster Relief Funding Agreement between the State of Florida, Division of Emergency Management and the City of Melbourne for Tropical Storm Fay and authorization for the City Manager to execute the agreement and all documents pertaining thereto.
- f. Approval of the Fourth Amendment to the Investment Advisory Agreement between the City of Melbourne and PFM Asset Management LLC; and authorization for the City Manager to execute the amendment.
- g. Annual renewal of Datastream 7i inventory and control management software system maintenance for the water reclamation and water treatment plants, Infor Global Solutions, Inc., Greenville, SC - \$40,003.20.
- h. Emergency relocation/replacement of two waterlines beneath Clydesdale Boulevard, Young’s Communication, Inc., Melbourne, FL - \$29,914.50; and transfer of \$29,915 from Water & Sewer Miscellaneous Capital Improvement Projects to establish funding for this project.
- i. Lien Rescission CE-07-075: Approval of a request for lien rescission from \$2,800 to \$0 for property located at 1977 Southland Avenue. (Applicant - City of Melbourne)
- j. Resolution No. 3036: A resolution implementing Fourth Quarter Budget Review recommendations.
- k. Modification No. 3 to the construction contract for the new City Hall for security upgrades, Project No. 10504, Certified General Contractors, Inc., Melbourne, FL -

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\$30,004.53; and transfer of Fourth Quarter budget savings to supplement this project budget. (See next agenda item for action.)

16. ITEMS REMOVED FROM THE CONSENT AGENDA

- c. Contract award for signalization rehabilitation at A1A and Paradise Boulevard, Traffic Control Devices, Inc., Altamonte Springs, FL - \$20,576.52.

Mr. Nowlin said he discussed with staff going with the standard (mast arm) rather than replacing with like equipment. Typically facilities located beachside have to be replaced every three to five years because of winds and high corrosion. He asked if the City would be better off spending the money now to update the signal rather than having a continuing replacement cost.

Mayor Goode pointed out the recent effect on the City's budget as a result of action taken by the Florida Legislature. He noted that Mr. Nowlin has a great proposal, but it is a bit expensive.

Mr. LaRusso asked the cost difference.

Mrs. Lamb said that to replace this signal with a mast arm, the estimated cost is \$250,000 versus \$21,000. She added that she would love to put a mast arm at this location. The City would eventually like to have mast arms at all major intersections, especially those that serve as evacuation routes. Staff is attempting to program one or two mast arms into the budget each year.

Mr. Nowlin pointed out that it would be cheaper in today's dollars as opposed to future dollars, especially given the recurring costs associated with this signal.

Mr. Thomas asked if there is any grant money available for evacuation routes. Mrs. Lamb said that the City has not been able to find any grant money for mast arms.

Moved by Thomas/Tasker for approval of Item 16 "c." Motion carried. Mr. Nowlin voted nay.

- k. Modification No. 3 to the construction contract for the new City Hall for security upgrades, Project No. 10504, Certified General Contractors, Inc., Melbourne, FL - \$30,004.53; and transfer of Fourth Quarter budget savings to supplement this project budget.

Mr. Nowlin said he understands the elevator security package (\$6,162.23); however, he is not convinced that the magnetometer in the Council Chamber lobby (\$9,893.45) and the bullet-resistant Council dais millwork (\$13,948.85) are items that are really needed.

Mr. LaRusso commented that less than a year ago, the City Council held a moment of silence in remembrance of the four council members, mayor and two staff members shot and killed at a Council dais in Missouri. A gunman came in upset over a zoning issue. Mr. LaRusso stated that he wholeheartedly supports this item.

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Mayor Goode said he believes it would be less expensive to make these changes now rather than modifying the building later.

Mr. Thomas said that bulletproof vests have a lifespan. He asked if there will be a lifespan on this material.

Deputy Chief Joe Hellebrand said that body armor has to be replaced because of perspiration; however, he does not believe that material placed inside of millwork would have an "expiration date."

Moved by LaRusso/Meehan for approval of Item 16 "k."

Mrs. Corby asked if the contract for City Hall contained a provision to cover all of these upgrades. The City Manager replied that these were contemplated at the time the contract was let. Staff knew that the details would have to be addressed at a later time.

The question was called. Motion carried. Mr. Nowlin voted nay.

17. RESOLUTION NO. 3037: A resolution declaring official intent to reimburse certain capital expenditures of Embraer Aircraft Holding, Inc. from proceeds of Industrial Revenue Bonds in an amount not exceeding \$55,000,000 for the construction of a new facility to be located at the Melbourne International Airport.

The City Attorney read the resolution by title. The following is an excerpt from the agenda report:

*On June 24, 2008, the City Council approved Ordinance No. 2008-24, which provided Embraer Aircraft Holding, Inc. with a number of incentives to locate its new jet aircraft assembly facility at Melbourne International Airport. Pursuant to the Ordinance, Embraer would provide at least 200 new jobs paying at least \$50,000 per year and construct its new plant in Melbourne. The plant is to contain roughly 149,500 square feet of floor space and will be worth approximately \$41.35 million, which should have a material and positive effect on the City's ad valorem revenues.*

*An agreement between the City and Embraer was attached to the ordinance outlining the responsibilities of each party in facilitating the aircraft assembly plant in Melbourne. One of the City's responsibilities is to act as the issuer of either Airport Special Purpose Facility Bonds or Industrial Revenue Bonds ("IRB") in an amount up to \$55,000,000 to assist in plant construction and outfitting of the facility.*

*Embraer has asked the City to take the first action toward undertaking the issuance of the IRB, which is to approve a resolution declaring the City's official intent to issue the IRB. This resolution does not approve the bond issue. Documents for that task will follow at a later date. Pursuant to U.S. Treasury Regulations, the resolution does initiate a process that will make all expenditures by Embraer relating to the construction of the project eligible for funding from the IRB, which may be a tax-free bond issue.*

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*Both the City Attorney and the City's bond counsel, Bryant, Miller, & Olive, P.A., have prepared the resolution and examined the legal effect of the resolution. The issuance of an IRB will not cost the City any money, and the City is not liable for repayment of the IRB. Embraer is responsible for repayment of the IRB bonds, and pursuant to its agreement with the City, Embraer has agreed to indemnify the City and taxpayers against any liability arising from the issuance of the IRB.*

Moved by Thomas/Meehan for approval of Resolution No. 3037. Motion carried unanimously.

18. SITE PLAN APPROVAL (SP-2008-12) EMBRAER AIRCRAFT HOLDING, INC.: (Public Hearing) A request for site plan approval to develop a new aircraft production/assembly and administration building with accessory paint building and a new delivery/design/sales facility on 14.751± acres and 11.93± acres zoned M-1 (Light Industrial), located at the Melbourne International Airport on the south side of General Aviation Drive, west of Apollo Boulevard. (Owner - Melbourne Airport Authority) (Applicant - Embraer Aircraft Holding, Inc.) (Representative - Tom Zenker, P.E., BRPH, Inc.) (P&Z Board - 11/06/08)

Mrs. Dittmer briefed Council. At its November 6, 2008 meeting, the Planning and Zoning Board voted unanimously to recommend approval of the three-sheet site plan prepared by BRPH Architects-Engineers, Inc., Melbourne, Florida, Project No. 6034.02, with a signed and sealed date of October 27, 2008, and the following conditions:

- 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 maintained throughout the development 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. The proposed building shall be substantially consistent with the rendering submitted by the applicant.
- e. In conjunction with Area 1, the Airport shall construct roadway improvements as outlined in the state grant application to Enterprise Florida. The details of the right-of-way improvements shall be coordinated with Brevard County and the City Engineer during the construction plan review process.
- f. 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 capacity

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reservation fee in the amount of \$3,240.00 for water and sewer impact fees. Payment must be received by the City of Melbourne within 10 business days of the date of rendition of the City Council Development Order. 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.

Rick Cloutier, Melbourne International Airport, and John Genuise, BRPH Architects and Engineers, were available for questions.

Moved by Meehan/Tasker for approval of the site plan based on the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

19. ORDINANCE NO. 2008-68 (LDR-2008-04/FOC-2008-06) SCHOOL CONCURRENCY: (First Reading/Public Hearing) An ordinance amending Appendix D, Chapter 3 of the City Code entitled, "Concurrency," by adopting the school concurrency provisions in the City's Land Development Regulations. (Applicant - City of Melbourne) (P&Z Board - 11/06/08)

The City Attorney read Ordinance No. 2008-68 by title. Mrs. Dittmer reviewed the agenda report and reported that the Planning and Zoning Board voted unanimously to recommend approval at its November 6 meeting. State law requires local governments and school boards to adopt a school concurrency system. On September 16, 2008 the City Council adopted a resolution to approve an interlocal agreement between the City and the School Board, and approved amendments to the Comprehensive Plan for the purpose of implementing school concurrency. This ordinance is the final step in this process.

The public hearing was opened and closed with no comments.

Moved by Tasker/LaRusso for approval of Ordinance No. 2008-68 based on the findings contained in the Planning and Zoning memorandum. Motion carried unanimously.

20. ORDINANCE NO. 2008-69 (CPA-2008-11) CAPITAL IMPROVEMENTS ELEMENT: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment updating the Capital Improvements Element and the schedule of Capital Improvement Projects in accordance with Florida Statutes and the Florida Administrative Code. (Applicant - City of Melbourne) (P&Z Board - 11/06/08)

Attorney Gougelman read Ordinance No. 2008-69 by its title. Mrs. Dittmer reviewed the item and reported that the Planning and Zoning Board voted unanimously to recommend approval at its November 6 meeting.

There were no comments during the public hearing.

Moved by LaRusso/Nowlin for approval of Ordinance No. 2008-69. Motion carried unanimously.

*Without objection, Council convened as the Melbourne Downtown Community Redevelopment Agency for the following item:*

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21. COUNCIL ACTION RE: Approval of a Grant Funding Agreement between the Melbourne Downtown Community Redevelopment Agency and Melbourne Main Street, Inc. for funding support in the amount of \$55,000 for the fiscal year ending September 30, 2009.

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

Mayor Goode directed comments to the members from the Main Street Board of Directors who were in the audience. He asked that the board work with the owners of the (same day surgery/eye clinic) parking lot so the public may use the lot on evenings and weekends. Although the lot is clearly marked that vehicles will be towed, people will stop coming Downtown if cars continue to get towed. The Mayor added that he would be glad to meet with representatives on this issue.

*Without objection, Council reconvened for the remaining agenda items.*

22. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Pat Poole, 805 East Palmetto Avenue, thanked Mayor Goode for his efforts in trying to find a new location for the Daily Bread. Mrs. Poole noted that many clients of Daily Bread may not be aware they are eligible for food stamps. She discussed the history of Daily Bread and encouraged Council to make this a countywide effort. If the soup kitchen were established in the middle of the county, away from businesses and residential areas, all cities would support this effort through payment of taxes.

Council Member Nowlin asked when Council will receive the revision to the Sign Code. Attorney Gougelman explained that the consultant is working on the final draft. Early next year, public comments will be solicited through a series of charrettes. After that, the Code will make its way through the normal cycle of Planning and Zoning Board and City Council review.

Council Member LaRusso said he would like to extend an invitation to Representative John Tobia to attend a City Council meeting after the session has ended and/or before if he would like to report on his priorities. City Council agreed that all of Melbourne's legislators have an open invitation to attend Melbourne City Council meetings.

The City Manager informed Council that the City was just notified that the Brevard Legislative Delegation will hold one meeting early next week. Incoming House Speaker Ray Sansom has indicated there will be no special projects considered by the Legislature this year. Based on the Mayor's schedule, Vice Mayor Thomas has accepted the opportunity to make a brief presentation to the delegation.

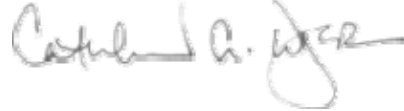
Mrs. Elliott added that the meeting will be held on Monday, December 1, 3:00 p.m. (Brevard County Government Center in Viera). Melbourne's priorities will be consistent with those adopted by Council last year. Mayor Goode asked that any priorities involving a request for funding be removed from the list. This is not the year to appear before the Legislative Delegation and request money.

23. ADJOURNMENT

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

The meeting adjourned at: 8:30 p.m.



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City Clerk – 12/3/2008

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