

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
NOVEMBER 23, 2010



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.

(Roll call order for this meeting per Council policy: Districts One through Six, except that the Mayor will vote last as provided by City Code and the Vice Mayor will vote second to last.)

1. The invocation was given by Minister Charles Knight, Eau Gallie Church of Christ.
2. Pledge of Allegiance.
3. Roll Call.

Present:	Harry C. Goode, Jr.	Mayor
	Kathy Meehan	Vice Mayor, District 3
	Mike Nowlin	Council Member, District 1
	Mark LaRusso	Council Member, District 2
	John Thomas	Council Member, District 4
	Molly J. Tasker	Council Member, District 5
	Greg Jones	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

The City flew its flags at half-staff in memory of former Mayor Vernon Dicks who passed away on November 1. The Mayor presented the flag that flew over City Hall to Mayor Dicks' wife, Juanita, and his daughters, Karen Fields and Laura Barnett.

5. Approval of Minutes - November 9, 2010 Regular Meeting

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

6. City Manager's Report

City Manager Jack Schluckebier announced that City Hall was recognized at a recent Keep Brevard Beautiful awards ceremony as one of the three most beautiful new structures in the County. He expressed the City's appreciation for this recognition.

With regard to the outdoor display and seating ordinance and adjustments to the Sign Code, Council Member Mike Nowlin said he intends to meet with the City Manager to review specific ideas.

Council Member Mark LaRusso referenced the report on the speaker timer system in the

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Council Chamber. He said that he's not in favor of installing such a system because it would detract from the hometown feeling in the Chamber. Public speaking is one of the hardest things a person can do, and a clock or yellow/red light might interfere with someone who is trying to share their opinion or voice their concerns. He recommended that this item be postponed for further review.

Mr. Schluckebier stated that unless there are objections, staff would propose that Council revisit this in about six months. He added that this Council may engage in a higher level of decorum than what was evidenced in the past, which brought this idea forward.

Moved by LaRusso/Tasker to (postpone) this item (installation of a speaker timer system in the Council Chamber) for at least six months. Motion carried. (Council Members Thomas and Jones voted nay.)

Mr. LaRusso advised that he would like to meet with the City Manager to discuss the outdoor display ordinance. Additionally, he reported that he received a call from a Downtown business that has been open for about four months. The business painted letters on the outside of its window stating it is open for business, listing restaurant specials, etc. Code Enforcement informed the owner that if the letters had been painted on the inside of the window, it would be okay and that the lettering on the outside has to be removed. Mr. LaRusso asked if there is justification in making this person spend a couple of hundred dollars to remove the signage on the outside and have it painted on the inside.

The City Manager said that it is likely that the Code differentiates between internal and external signage; they are controlled and measured in different ways for purposeful reasons. He added that he cannot answer the specific question until he is able to review the Code.

Council Member Molly Tasker referenced the report on the FDOT crosswalk on Strawbridge Avenue, which notes that the Florida Department of Transportation has stated that a blinking yellow light loses its effectiveness after people get accustomed to it. Mrs. Tasker stated that if the light is effective for a period of one or two years, she would rather have that safety factor in place. She asked staff to continue pursuing that option. Mayor Goode asked if there were any objections. There were no objections to Mrs. Tasker's request.

7. Public Comments

UNFINISHED BUSINESS

8. ORDINANCE NO. 2010-45 (CU-2009-19) MAINSTREET PUB: (First Reading/Public Hearing) An ordinance granting a conditional use to allow consumption of alcohol on the premises at an existing bar on a developed 0.39±-acre parcel zoned C-C-3 (Central Business District with a conditional use to allow consumption of alcohol on the premises), located on the south side of New Haven Avenue, west of Grant Place, and east of Hallwood Place. (Owner - JMC Limited Corp.) (Applicant/Representative - Lena McAneney) (Postponed - 8/24/10)

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City Attorney Paul Gougelman read Ordinance No. 2010-45 by title. He advised Council that City staff and the Planning and Zoning Board both recommended denial of the request. If Council denies the ordinance, under state law, the motion will need to include the legal reasons for denial.

Planning and Economic Development Director Cindy Dittmer introduced the item. The following is an excerpt from the agenda report:

The applicant is requesting to modify the current conditional use to remove the following condition: "Any outdoor events on the property shall be limited to 10:00 p.m., which includes concerts, special activities and music." This condition was placed in the conditional use ordinance by City Council during the original adoption process (2004).

Although efforts have been made to reduce noise levels, there have still been issues with noise on the property. A review of police activity for the property since 2004 reveals 72 police calls for noise disturbances. These have steadily increased over time. In 2010 there has been a decrease, with only 12 noise complaints called into the Police Department so far. The principal concern is the potential for noise due to the location of the gazebo at the rear of the property in proximity to the residential properties to the south. Staff cannot recommend approval of removing the previous condition.

During the Planning and Zoning Board meeting, two residents spoke against the request due to the applicant's inability to abide by the conditions of the previous conditional use approval. The board voted six to one to recommend denial, based upon the findings contained in the Planning and Zoning Board agenda memorandum. In the same motion, the board clarified that the applicant should be allowed to request special events in accordance with City Code for special activity permits and continue to limit the hours for outdoor events until 10:00 p.m.

Mr. Nowlin asked if the condominiums to the south were already in place when the original conditional use was considered and if the condition came as a result of that. Mrs. Dittmer replied yes to both questions.

Mr. Nowlin said that he assumes Code Compliance takes the average reading for a noise level over a specific amount of time. He asked if staff knows how far above the Code level the readings were on this property.

Mrs. Dittmer said that Code Enforcement has been out on Friday and Saturday evenings over the last month or two. Until this past weekend, Main Street Pub had been in compliance at the property line where residents are located. However, there was an issue last weekend with noise being over the limit. She said that she believes the level was 75 dB when they were cited.

Mr. Nowlin asked what the current Code is for noise.

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Code Enforcement Administrator Dan Porsi explained that when a commercial property abuts a residential property, the dB level at the residential property line must be 55 or less after 10:00 p.m. Before 10:00 p.m., it may be as high as 60 dB.

Mr. Nowlin asked if there are any other bars along New Haven Avenue that have these kinds of noise complaints. Mr. Porsi reported that for the last several weeks, Main Street has not been a problem. There have been problems at the east end of the Downtown area. However, this weekend they had a different type of band. Once the pub was advised there was a problem, they immediately corrected it.

Council Member Greg Jones asked if the noise complaints are spread out over several residents or part of a focused group. Mr. Porsi said that a focused group complains east along Waverly Place and one or two residents complain in the area of Main Street Pub. He added that the difficulty with Main Street is that three bars are connected and sometimes it is difficult to determine which business is making the noise late at night.

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

Lena Genavese, representing Main Street Pub, said that the City Council recently changed the noise code for the Downtown entertainment district and she believes that change was made because the Downtown area is growing. Main Street Pub is aware of the residents; however, she said she hopes that neither the residents nor the pub become primary. Both parties should co-exist and work together.

Continuing, Ms. Genavese said that this does not affect just Main Street. It affects their distributors, suppliers, and employees. She reported that the sales tax revenues for the pub are down \$24,000 a year.

Mr. Nowlin asked if there is a specific change in the business that is causing Main Street to need this change. Ms. Genavese replied yes and stated their sales drastically dropped in the past two years. In May 2009 sales began to plummet and that affects the pub, people they do business with, advertisers, and employees. She confirmed for Mr. Nowlin that the pub has provided extra landscaping, foamed the back of speakers, etc.

Council Member John Thomas asked if the pub has ever explored installing a shell to redirect the sound. Ms. Genavese replied yes and said she does not believe it would meet the Zoning Codes because it would require a giant concrete wall, which would probably bounce the sound directly to Trinity Towers.

Mr. Jones said that the residents claim that initially the music didn't bother them. He asked if there has been a change in the type of music being presented. Ms. Genavese replied no and added that they have always had the same type of music. She commented that the conditional use was "forgotten" for about four years and then suddenly it was enforced and she is not sure why.

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Council Member Tasker asked if the requirements for the decibel level have changed. Mrs. Dittmer said that Council changed the noise ordinance about two months ago; however, there was no change on this specific property because it abuts a residential property. The additional rise of five decibels in the Downtown area did not have any affect on residential properties. The Code continues to require commercial businesses to adhere to the residential decibel level at the property line; Main Street abuts a residential property.

Ms. Genavese stated that the abutting property is zoned C-3, commercial.

Vice Mayor Kathy Meehan said she has been in Main Street at the back of the bar and found the music to be quite loud. She recommended that the pub change its program.

Stephen Hoyt, manager, Main Street Pub, asked Council to correct what he feels is an inequity in Downtown Melbourne – specifically the conditional use that prevents the pub from playing music after 10:00 p.m. Mr. Hoyt discussed the history of Main Street Pub, which began with a denial before the permit was eventually issued. When the permit was finally issued, it contained a serious condition restricting outdoor events and music to 10:00 p.m.

Mr. Hoyt stated that since the pub opened in March 2005, there has been a renaissance of sorts in Downtown Melbourne. The area is seen in an entirely new light as a lively, viable entertainment district. In quick order, many other bars and restaurants opened, which have all benefited by the influx of foot traffic initiated by the pub and Meg O'Malley's. The 10:00 p.m. noise restriction was forgotten and not enforced by the City for four years. The pub operated under the same noise ordinance as all other bars and restaurants. They received noise complaints, but like a prudent neighbor, they turned the music down when asked. In comparison to the other bars and restaurants in the area, they have not received a high number of complaints.

In May 2009 a Code Enforcement Officer arrived at the pub and instructed them to turn off the music. They complied and no longer allowed a DJ to set up outside. Live acts were instructed to stop playing at 10:00 p.m. The business suffered dramatically with sales being off by as much as 50% on some nights.

Mr. Hoyt stated that the pub feels there is no need for this restriction. The existing noise ordinance more than adequately addresses the issue of noise and to single the pub out for additional noise restrictions is capricious and smacks of bias and unfairness. An expectation of some noise is a reality of living in a commercially zoned area in a vibrant Downtown area. The City has recently enacted changes to the noise ordinance to allow a higher decibel level in the core entertainment area, recognizing the need for compromise on this issue.

In closing, Mr. Hoyt said that barring the full removal of the noise restriction, the pub would like the opportunity to play background music after 10:00 p.m. And, they are more than willing to accept a probationary period of 90 to 180 days with the understanding that

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a citation by Code Enforcement during that time would mean the pub would lose the chance to have a new conditional use permit.

Mr. Porsi confirmed for Council Member LaRusso that regardless of the City's noise ordinance, the pub is not allowed to have music outside after 10:00 p.m.

Mr. Nowlin asked if there is anything in Code that would prohibit the pub from putting up temporary sound barriers. Mr. Porsi replied no and said several of the bars and restaurants in the Downtown area have added foam backing and other types of sound deadening equipment.

Council Member Jones referenced Mr. Hoyt's comment that they would at least like to have ambient music. He asked Mr. Hoyt to provide a definition of ambient music. Mr. Hoyt replied that right now he is not allowed to have a television on after 10:00 p.m. because that is considered amplified. The pub would like the ability to play music over its speakers within existing City laws. Mr. Hoyt stressed that the pub's preference would be to have the restriction removed entirely so it can be governed by the noise ordinance in effect for every other bar and restaurant in Downtown.

Mrs. Tasker said if the decibel level is the criteria, she would like to know the difference between people talking/drinking or music. She added that she's having a difficult time saying the pub can't have outdoor music as long as it stays within the required level.

Vice Mayor Meehan clarified that the restriction was added because of the proximity to the condominium behind the pub. There are no other bars in the Downtown area that close to a condominium.

Mrs. Tasker said it shouldn't matter whether the noise is generated from people talking, laughing, or yelling, or music. It shouldn't make a difference as long as it remains within the sound requirements.

Mr. Jones referenced the letter dated July 22, 2010 (and received November 22, 2010) from Grant Place Condominium Association, which indicates that initially the pub played pleasant, ambient music that could not be heard on the condominium property after 10:00 p.m. Council Member Jones suggested that this is a compromise that could be considered.

Attorney Gougelman said that in response to Mrs. Tasker's remark that it shouldn't make any difference if the noise is coming from music or people talking, many times the source of the noise can make a big difference. There are considerations such as pitch, vibration, and bass.

Mrs. Tasker remarked that the measurement the City has provided is the decibel level and not source. With regard to the pub, we've made it source.

Ron Welch, representing Grant Place Condominium Association, confirmed that the condominium is zoned C-3, but with a residential use. He added that the other bars and

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restaurants on New Haven Avenue do not abut residential property or property used as residential. Mr. Welch recalled that in 2004 when the pub was seeking a conditional use, the owners indicated that they would like to have light background music and that they would be good neighbors. The condominium association supported the request. It ended up a nightmare because the pub did not adhere to its conditional use. The music played well after 10:00 p.m. and the noise level was exceeded time and time again.

The residents have no objections to music being played inside the bar or on the front deck. The residents fear that if what the applicant is proposing is approved, it will be abused. It was abused in the past and the pub wasn't a good neighbor. With regard to the pub's revenues being down, Mr. Welch pointed out that revenue for all businesses has been down in the past two years; this is a depressed economy.

Mr. Welch confirmed for Council Member Thomas that the zoning on the condominiums has not changed since he purchased his property.

Responding to Council Member Nowlin, Mr. Welch said that the noise is the most annoying to the residents in the first two buildings.

Mrs. Meehan's motion to deny Ordinance No. 2010-45 based on the findings contained in the August 6 Planning and Zoning Board memorandum did not receive a second. Mr. Thomas's motion to approve Ordinance No. 2010-45 did not receive a second.

Mayor Goode said that he plans to tour the Downtown area with the City Manager and several members of staff so he can experience the noise levels firsthand.

Moved by Goode/Nowlin to postpone this item for 180 days to allow the Mayor and staff time to study the noise in Downtown Melbourne. (Mr. Nowlin later removed his second.)

Mr. Thomas asked if the motion includes that the noise condition for the pub will be removed during the 180-day period. Mayor Goode said he did not address the conditional use; the pub will have to stop outdoor noise at 10:00 p.m.

Council Member Thomas said it would be fair to remove the condition for 180 days to see how the pub operates. This would provide a fair playing field and allow the pub to play by the same rules as everyone else. If it doesn't work, there are safeguards in place with regard to sound.

Mayor Goode said that the people in the condominiums have to live with it, so in fairness to them, his motion is to leave the status as it currently is and postpone action on this ordinance for six months.

Vice Mayor Meehan said that her concern is for the residents in the condominiums who have to live with the noise and call the police every time it gets loud.

Council Member LaRusso said that the pub has abused its permit. He added that he believes the two entities can come together and work through this issue. If Council

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agrees, he said he would like to level the playing field for a 30-day period. The pub would be on probation and would have to earn the respect of the residents in the condominiums. He closed by saying there should be some kind of balance.

Mr. Nowlin said that based on the comments from Mr. Thomas and Mr. LaRusso, he believes the applicant needs some room; therefore, he will remove his second from the motion to see if a compromise can be reached.

Moved by Goode/Meehan to postpone this item for 180 days to allow the Mayor and staff time to study the noise in Downtown Melbourne.

Council Member Jones said that if there is going to be a probationary period, he would like to allow the pub to have some type of music. The letter from the condominium association mentions low level music and the manager of the pub seemed agreeable to a compromise. This would allow everyone to see if they are good stewards when the leash is loosened. The probationary period should be focused and there should be a set time to return to Council to discuss the results.

A brief discussion continued.

Mr. LaRusso asked what the motion accomplishes if we're not going to allow the pub a period of time to play music under the same decibel guidelines that the entire Downtown is guided by.

Attorney Gougelman said that the Mayor feels the need to tour the Downtown area and listen to what the noise standards are like. The status quo period might provide an opportunity for the applicant, Code Enforcement, and the condominium association to explore alternatives.

The question was called. The roll call vote was:

Aye: Meehan and Goode

Nay: Nowlin, LaRusso, Thomas, Tasker, and Jones

Motion failed.

Moved by LaRusso/Thomas to postpone this item for 180 days to allow the Mayor and staff time to study the noise in Downtown Melbourne. During this period, the applicant will be allowed a 60-day period to adhere to the (existing noise code).

Mrs. Tasker asked what exactly decibels measure.

Assistant City Attorney Suzanne Crockett said that the City's noise ordinance allows Code Enforcement to take measurements based on two things – frequency and decibel. She elaborated on each.

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Mrs. Tasker expressed support for allowing the applicant 60 days to live within both of those requirements.

Discussion followed. Mr. LaRusso clarified that the motion will allow the pub to incorporate music on the back deck within the constraints of the existing noise code, which incorporates frequency and decibel level. This will allow the two neighbors an opportunity to function – the residents will have protection of their way of life and Main Street Pub will have an opportunity to prove itself as a worthy neighbor. If they don't, "game over."

The question was called. The roll call vote was:

Aye: Nowlin, LaRusso, Thomas, Tasker, and Jones

Nay: Meehan and Goode

Motion carried.

NEW BUSINESS

9. COUNCIL ACTION RE: Change Order No. 1 to the contract for Crane Creek Promenade Improvements for additional concrete cap, drainage, and park amenities, Project No. 10009, R.W. Paul Construction, Inc., Maitland, FL - \$59,944.41; and transfers of \$163,000 from Project No. 10009 to Miscellaneous Stormwater Projects (No. 20099) and \$163,000 from Transportation Impact Fees to provide funding for this project.

City Engineer Jenni Lamb read the staff recommendation.

Mr. Nowlin asked if Frazier Engineering met with Engineering and Leisure Services staff in order to develop a full picture of the condition of the dock.

Mrs. Lamb replied yes and added that representatives from all three were on site when the boards were pulled for the inspection. Unfortunately, a section with good concrete cap was pulled for inspection.

Mr. Nowlin stated that if Frazier had looked at it from the water side, they would have seen that it was starting to sag. He commented that it would behoove Frazier to take a closer look at issues like this because this isn't the first time they've asked for change orders on projects because they didn't see there were issues. This should have been known on the front side.

Moved by Tasker/Nowlin for approval of Change Order No. 1 in the amount of \$59,944.41 to R. W. Paul Construction, Inc., Maitland, FL for the Crane Creek Promenade Improvement project; a budget transfer of \$163,000 from Project No. 10009 into Stormwater Miscellaneous Project No. 20099; and a budget transfer of \$163,000 from Transportation Impact Fees into Project No. 10009. Motion carried unanimously.

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10. COUNCIL ACTION RE: Purchase and installation of telephones, fiber-optic cabling, and networking for Fire Station No. 71, Project No. 10907, Morse Communications, Inc., Melbourne, FL - \$56,643.60.

Mrs. Lamb reviewed the agenda report and read the staff recommendation.

Moved by LaRusso/Nowlin for approval of direct purchase of telephones, fiber-optic cabling, and networking in the amount of \$56,643.60 to Morse Communications, Inc., Melbourne, FL for the Fire Station No. 71 project. Motion carried unanimously.

11. COUNCIL ACTION RE: Authorization to proceed with filing an eminent domain complaint for easement acquisition at 1101 North Harbor City Boulevard for the Potable Water Byproduct Main Relocation, Project No. 30103.

Mrs. Lamb introduced the item. The following is an excerpt from the agenda report:

In order to proceed with the construction of the potable water byproduct main relocation project, a permanent utility easement must be acquired at 1101 North Harbor City Boulevard, which is private property owned by Mr. Salman Alsalman. The easement has an appraised value of \$17,000. The City began negotiations with the property owner by offering \$17,000, and the owner countered by requesting \$325,000. It is apparent that additional negotiations will not be successful.

The City risks potential penalties should the project not be completed by the deadlines designated by the Florida Department of Environmental Protection. Legal counsel has advised that the City should initiate the eminent domain and “quick take” proceedings authorized in Florida Statutes, Chapter 74, to take the necessary easement under an expedited acquisition process.

Mr. Nowlin referenced the huge difference in price and asked who hired the original appraiser. Mrs. Lamb replied that the City hired the appraiser. The property owner said he was going to hire an appraiser; however, staff has not seen a copy of that appraisal. At this point, we’re not sure what he based his dollar value on.

Mr. Nowlin asked for confirmation that this is simply an easement and the applicant will still have use of his property. Mrs. Lamb replied exactly and noted that the easement runs parallel to the U. S. 1 right-of-way. Part of the appraisal was based on there being over a 15-foot setback for this property. In a sense, we would not be restricting the owner from using any of his property because it is in a setback area.

Mr. Thomas stated that this is placing the City in an awkward position. We have to move the project forward and this easement will cause absolutely no impediment to the owner’s business. There would be no detriment to the owner whatsoever. To have this disparity in price holds the taxpayer hostage; therefore, he noted that he supports filing an eminent domain proceeding.

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Mr. LaRusso said that in 2005 Council pledged that it would never proceed with eminent domain for an economic development project. He pointed out that the item on this agenda does not relate to economic development. It is a property owner who is trying to hold the City hostage to the tune of \$325,000 on a City project that will provide clean, safe water to all our residents.

Moved by Thomas/LaRusso for authorization to proceed with filing an eminent domain complaint to take the necessary easement for the Potable Water Byproduct Main Relocation project.

Mr. Nowlin stated that this is strictly an easement that does not deny the property owner use of his property; therefore, he will support the motion.

The question was called. Motion carried unanimously.

12. CONSENT AGENDA:

Mayor Goode reported that Council Member LaRusso removed Item “e.”

Moved by Nowlin/Meehan for approval of the consent agenda, less Item “e”. Motion carried unanimously.

- a. Change Order No. 1 to the 2009-2010 resurfacing contract for additional restriping on Pineapple Avenue and Lipscomb Street, Fausnight Stripe and Line, Inc., Longwood, FL - \$40,934.80.
- b. Supplement No. F113 to the Continuing Consultant’s Contract for engineering services to provide for design, bidding, and construction administration services for Light Emitting Diode lighting replacements at 15 City facilities, Project No. 18410, Frazier Engineering, Inc., Melbourne, FL - \$21,500.
- c. Approval of a Highway Landscape Construction and Maintenance Memorandum of Agreement between the State of Florida Department of Transportation and the City of Melbourne for the Strawbridge Avenue Median and Landscaping Improvements from Livingston Street to the Railroad Tracks, Project No. 14006; and authorization for the City Manager to execute the agreement.
- d. Approval of the Fifth Amendment to the Investment Advisory Agreement between the City of Melbourne and PFM Asset Management LLC.
- e. Annual contract award for disaster debris removal services, Ceres Environmental Services, Inc., Sarasota, FL, as primary contractor; and CrowderGulf Joint Venture, Inc., Theodore, AL, as secondary contractor, at unit prices as quoted in their proposals. (See next item for action.)

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- f. Annual contract award for disaster debris management and monitoring services, Beck Disaster Recovery, Inc., Maitland, FL – at unit prices as quoted in their proposals.
- g. Purchase of 25 sets of firefighter personal protective clothing, Fisher Safety, Suwanee, GA - \$1,686.28/each; for a total cost of \$42,157.
- h. Contract approval for a full-service fire protection program, SimplexGrinnell, LP, Orlando, FL - at unit pricing; total estimated annual cost of \$24,098.22.
- i. Purchase of ductile iron pipe, fittings, and 20-inch butterfly valves, Ferguson Enterprises (Waterworks), Melbourne, FL - \$21,926.38.
- j. Amendments to Personnel Policies and Procedures, Sections 5, 6, and 8.
- k. Acquisition and implementation of a Local DNA Index System (LODIS); authorization for the City Manager to execute a three-year LODIS Software License Agreement between LODIS (a division of DNA:SI Labs) and the Melbourne Police Department; approval to purchase forensic DNA testing and analysis and related services at unit prices; estimated three-year cost of \$84,765; and appropriation of grant funds in the amount of \$84,765 to establish a project budget.
- l. Resolution No. 3167: A resolution amending Resolution No. 3166, which reported the outcome of the general municipal election conducted November 2, 2010; amending the total of votes for each candidate and referendum questions in accordance with the official certificate of County Canvassing Board.
- m. Resolution No. 3168: A resolution adopting Fourth Quarter Budget Review recommendations.

13. ITEMS REMOVED FROM THE CONSENT AGENDA

- e. Annual contract award for disaster debris removal services, Ceres Environmental Services, Inc., Sarasota, FL, as primary contractor; and CrowderGulf Joint Venture, Inc., Theodore, AL, as secondary contractor, at unit prices as quoted in their proposals.

Mr. LaRusso remarked that one of the shortlisted firms, AshBritt, Inc., is a large firm with major contracts down South. He referenced the ranking of the three firms in the “personnel” category and asked why AshBritt was so low.

Public Works and Utilities Director Ralph Reigelsperger said there were two stages of reviews. In the first stage, each of the three firms provided excellent paperwork, AshBritt included. However, during the actual interview, that firm came in third.

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Mr. LaRusso said he was approached by a representative of this firm and they discussed the firm's background. He noted that he was surprised to see the ranking and that the presenter didn't hit the marks with the evaluation committee.

Mayor Goode disclosed that he spoke with Mr. Spearman and Mr. Book, two of the top lobbyists in the State of Florida, in general about this item. He noted that neither asked him to support or deny this item.

Moved by LaRusso/Nowlin for approval of the annual contract award for disaster debris removal services, Ceres Environmental Services, Inc., Sarasota, FL, as primary contractor; and CrowderGulf Joint Venture, Inc., Theodore, AL, as secondary contractor, at unit prices as quoted in their proposals. Motion carried unanimously.

14. PARKING LOT APPROVAL (PR-2010-01) BREVARD VISION CARE: (Public Hearing) A request for approval of a parking lot within a residential district on two parcels zoned R-1A (Single-Family Low Density Residential), located on the north side of Edgewood Drive, east of Babcock Street, and south of Colonial Drive. (Owner/Applicant - Eyeland, LLC) (Representative - Matt Soyka, P.E.) (P&Z Board - 11/04/10)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board and staff recommended approval of the request based upon the findings and conditions contained in the Planning and Zoning Board memorandum.

Mr. Nowlin asked the hours of operation. Mrs. Dittmer replied that they are office hours.

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

Terry Naberhaus introduced himself as one of the doctors at the eye center. He explained that the existing structure on the property is in bad shape and is falling down, which is why they would like to remove it. They would like to use the lot for parking to keep as many people as possible off the street for the surrounding neighbors. He reported that they met with the neighbors numerous times and most are satisfied with the request. With regard to hours of operation, he said Monday through Friday, 8:30 a.m. – 5:30 p.m. and Saturday, 9:00 a.m. – 2:00 p.m.

Kevin Dodge, 17 Edgewood Drive, distributed a packet of information, including photographs of the area. He stated that none of his neighbors approve of this project; however, they feel like they have to go along with it. He stated that he is opposed to the project because it will cause a future flood risk to his street and neighborhood.

Mr. Dodge referenced the erosion control project in the M-1 canal at Edgewood Drive and Ruffner Road. The canal has a design flaw due to its shape, which is one of the reasons Ruffner Park and FIT flood during hurricane season. The Conservation Element of the Comprehensive Plan provides for "management and control of stormwater runoff and preventing future problems through use of development regulations." The plan also provides that "the City will ensure new developments are designed to minimize...stormwater runoff." Mr. Dodge said he needs to know if Council stands

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behind these policies and is serious about neighborhood safety. He closed by suggesting that this item be postponed until the canal improvements can be tested in a tropical storm.

A brief discussion followed between Mr. LaRusso and Mr. Dodge. Mr. LaRusso recommended that information provided by speakers be provided in advance of the meeting so Council has time to review the material.

In response to Vice Mayor Meehan, Mr. Dodge confirmed that he attended both Planning and Zoning Board meetings on this item. He noted that the Planning Board also received this information.

Mr. Naberhaus returned to the lectern and said that their plan has been reviewed by the St. Johns River Water Management District. He said that he does not anticipate that they will be running water anywhere in the neighborhood; therefore, he does not see that as a big concern.

Mr. Thomas thanked Mr. Dodge for expressing his concerns and taking the time to present this information. He said that there is probably no other area in the City that has had more attention with regard to drainage than this area; extensive work has been done in this area. Additionally, staff evaluated the plan and does not see anything that should prevent Council from approving the parking lot.

Moved by Meehan/Tasker for approval of PR-2010-01 based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried unanimously.

15. ORDINANCE NO. 2010-53 (CU-2008-06/SP-2008-10) FLORIDA RECYCLERS: (First Reading/Public Hearing) An ordinance granting a conditional use to allow a solid waste, Class III landfill on 44.72± acres zoned C-M-1 (Light Industrial) and site plan approval on 58.5± acres including the landfill and a 20-foot wide berm/visual landscaping buffer along the property frontage of Sarno Road, located south of Sarno Road, east of North Drive, and west of Wickham Road. (Owner/Applicant - Florida Recyclers of Brevard, Inc.) (Representative - Jeremy Sadoff) (P&Z Board - 11/04/10)

Attorney Gougelman read the ordinance by title and Mrs. Dittmer provided a brief. The Planning and Zoning Board voted unanimously to recommend approval of this request at its November 4, 2010 meeting. Staff recommends approval based on the findings and conditions contained in the Planning and Zoning Board memorandum.

Mr. Nowlin asked if there are FAA restrictions on the property with regard to physical height. Mrs. Dittmer said yes and noted that the height limit of the FAA would still apply. There is a 40-foot high limit from the Zoning Code.

Mayor Goode called for disclosures. There were no disclosures. The Mayor opened the public hearing.

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James Fallace, attorney representing Florida Recyclers, requested approval of the request. He noted that his client adopts the findings of staff and the Planning and Zoning Board.

Craig Page, 2920 Fountainhead Boulevard, displayed the site plan that was submitted to DEP with the applicant's original application. The plan shows the 12.32-acre wetland that was destroyed, and it shows a five-acre wetland on the frontage property. The applicant filled the 12-acre wetland in violation of its conditional use, went to DEP for a mitigation permit, and purchased property to mitigate the damage. However, no property was ever purchased to mitigate the front wetland. The applicant now wants to double the size of the landfill without any concurrency adjustments.

Continuing, Mr. Page said that the DEP permit allows a height of 104 feet on its permit rather than the 65-foot height the City is insisting on. He displayed a picture taken from Sarno Road which shows a "brown mountain" in the background sitting on a green plateau. Mr. Page explained that the plateau is currently at 60 feet; therefore, the "brown mountain" is way above the 65-foot limit.

Mr. Page summarized by saying he lives one-half mile from this site. His home has been flooded twice and his interest is in saving the remaining wetland. He noted that Council did the right thing before by requiring the 12-acre wetland to be saved, but there doesn't seem to be interest in saving the remaining five-acre wetland. He asked Council to impose the following conditions: the remaining five-acre wetland would be preserved forever; any type of cut through on the berm would be prohibited; and require the site plan to be a condition with DEP so the landfill doesn't reach a height of 104 feet.

Mr. Fallace returned to the lectern and clarified that the five-acre frontage wetland was mitigated by appropriate permits and the berm is an issue that is being addressed with City staff. It has been approved, engineered, and landscaped. And, they believe it is going to be a significant improvement to the property from a visual barrier standpoint.

The settlement agreement and ordinance require them to comply with the mitigation permits, which are already in place. The maintenance agreement requires continual maintenance of the berm by the property owners and future owners of the frontage property. Mr. Fallace reported that they spent more than \$175,000 in off-site mitigation and another \$180,000 for improvements to the landfill property. He closed by asking Council for approval.

Mr. Page stated that he has searched the St. Johns River Water Management District data and has seen no evidence of the additional permit for the front parcel.

Attorney Gougelman replied that the five-acre wetland is located on the frontage parcel and is not subject to the conditional use permit.

Council Member LaRusso asked if the mitigation has been done on the five acres. Attorney Gougelman said he has no idea, but it's not an issue as part of the conditional use. Mr. Fallace has stated that the mitigation has been done.

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Mr. LaRusso asked for confirmation that if Council approves this all the way through, the five acres will eventually belong to the City. Mr. Gougelman replied correct. Mr. LaRusso pointed out that if there is any mitigation to be done, it would have to be done by the City.

Continuing, Mr. LaRusso addressed Mr. Fallace and said that all of the improvements were done because there was a lawsuit between the City and his client. If the law had been followed in the beginning, a lot of work and money would not have been required. Council Member LaRusso stated that he's not going to support this. He closed by asking what the ultimate height of the mound will be.

Mrs. Dittmer said that the maximum height allowed is 40 feet. They are slightly below 40 feet right now. The reference to 60 or 65 feet made by the speaker is that the elevation of Sarno Road is in the 20-foot range. The height can be 40 feet higher than the elevation of Sarno Road. There is no allowance in the conditional use to allow more than 40 feet, regardless of permits from other agencies.

Responding to Council Member Jones, Mrs. Dittmer said that the landfill is considered a structure in the Zoning Code. The height of a structure is measured from the edge of the right-of-way – typically, the edge of the property. Therefore, the elevation of this structure would be 40 feet above the elevation at the edge of the Sarno Road right-of-way.

Moved by Thomas/Meehan for approval of Ordinance No. 2010-53 based upon the findings and conditions contained in the Planning and Zoning Board memorandum. Motion carried. (Council Member LaRusso voted nay.)

16. ORDINANCE NO. 2010-54 (CPA-2010-04) AND ORDINANCE NO. 2010-55 (Z-2010-1162) OMAN PARCEL: Ordinances providing for a Comprehensive Plan Amendment and rezoning on 2.5± acres, located on the northwest corner of Stewart Road and Lake Washington Road.

- a. Ordinance No. 2010-54/CPA-2010-04: (First Reading/Public Hearing) An ordinance providing for a Comprehensive Plan Amendment changing the Future Land Use from Low Density Residential to Office Professional on 2.5± acres.
- b. Ordinance No. 2010-55/Z-2010-1162: (First Reading/Public Hearing) An ordinance changing the zoning from R-1A (Single-Family Low Density Residential) to R-P (Residential Professional) on 2.5± acres.

The City Attorney read both ordinances by title and Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board voted unanimously to recommend approval at its November 4, 2010 meeting.

Mayor Goode called for disclosures. Mr. LaRusso said that he received the same communication that is included in the agenda package (email dated November 11 from Doug Robertson).

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Vice Mayor Meehan said that on July 9 she met with Mr. Robertson. They discussed that the property is vacant and at this point the plans call for an office professional building.

The Mayor opened the public hearing.

Doug Robertson, land planner representing the owner, informed Council that the owner of the property is present. He stated that they agree with the staff report. Mr. Robertson read the description of R-P zoning, which includes “the provisions of the district are intended to apply to a transition area. Principal uses and restrictions of the district are intended to promote and protect low density residential uses.” He commented that is what they have elected to do. The staff report indicates that the request is compatible with the surrounding properties and it meets the concurrency test with regard to traffic generation and public services. It is consistent with the Comprehensive Plan objectives and policies.

Mr. Robertson summarized by saying that they tried their best to work with and communicate with the surrounding neighbors. They have addressed some of their concerns and they feel like they have done their job in that respect.

Mrs. Meehan asked if they spoke with residents by phone or if they held a meeting.

Mr. Robertson said he asked for a meeting with the homeowners’ association president; however, he (president) did not feel there was a need. This was after they mailed information directly to every property owner in both subdivisions.

Mrs. Meehan asked what their principal concerns were. Mr. Robertson said the concerns related to height and setback. They agreed to double the required setback to 50 feet and to limit the building to a single level, professional services building.

Moved by LaRusso/Thomas for approval of Ordinance No. 2010-54, based upon the findings contained in the Planning and Zoning Board memorandum.

Mr. Nowlin said he’s not going to support this. The property is surrounded on four sides by residential, with the exception of one (synagogue), which is only used occasionally. Common sense dictates that the property should be residential.

Mrs. Tasker said she does not believe she can support this either. It is a very residential neighborhood. The northeast quadrant appears to be platted as townhouses or residential use. She is concerned that those owners will come in and say that they’d do better zoned commercial. It’s a slippery slope and she’s afraid the neighborhood will lose its residential quality.

The question was called. The roll call vote was:

Aye: LaRusso, Thomas, Meehan, and Goode

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Nay: Nowlin, Tasker, and Jones

Motion carried.

Moved by Thomas/LaRusso for approval of Ordinance No. 2010-55, based upon the findings and condition contained in the Planning and Zoning Board memorandum. The roll call vote was:

Aye: LaRusso, Thomas, Meehan and Goode

Nay: Nowlin, Tasker and Jones

Motion carried.

17. ORDINANCE NO. 2010-56 (ED-2010-02) AND RESOLUTION NO. 3169 (BR-2010-05) VFT FL, LLC: Approval and support of applications for the Ad Valorem Tax Exemption Program and the Melbourne Economic Enhancement Program for a controlled environment agricultural facility on 10 acres of Melbourne Airport Authority property.
- a. Ordinance No. 2010-56/ED-2010-02: (First Reading) An ordinance granting an ad valorem tax exemption for a period of four years totaling an estimated \$444,000.
 - b. Resolution No. 3169: A resolution supporting VFT FL, LLC's application to the State of Florida Office of Tourism, Trade, and Economic Development for tax refunds through the Qualified Target Industry Program and the Brownfield Jobs Bonus Tax Refund Program. (The resolution will return for approval following second reading of the ordinance.)

Attorney Gougelman read the ordinance by title. The Mayor pointed out that a representative from the Economic Development Commission is available for questions.

Moved by LaRusso/Meehan for approval of Ordinance No. 2010-56. Motion carried unanimously.

18. ORDINANCE NO. 2010-57 (CPA-2010-05) CAPITAL IMPROVEMENTS ELEMENT: (First Reading/Public Hearing) An ordinance amending Appendix D, Chapter 4, Section 4.04 of the City Code; amending Chapter X of the Comprehensive Plan entitled "Capital Improvements Element" and the Water Supply Facilities Work Plan, which is an exhibit to Chapter V, "Infrastructure Element", to reflect the annual update of the Capital Improvements Schedule. (Applicant - City of Melbourne)

The City Attorney read Ordinance No. 2010-57 by title. Mrs. Dittmer explained that the Legislature requires the City to update this annually. All of the projects contained in the Capital Improvements Element come from the current five-year Capital Improvements Program in the adopted budget and the Transportation Planning Organization's project plans. There are no new projects included.

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The public hearing was opened and closed without comment.

Moved by Nowlin/Tasker for approval of Ordinance No. 2010-57, based upon the findings presented.

Mr. LaRusso pointed out that this is an unfunded mandate.

The question was called. Motion carried unanimously.

19. COUNCIL ACTION RE: Legislative priorities for the 2011 Legislative Session.

Mr. Schluckebier introduced the item. The following is an excerpt from the agenda report:

The memorandum in the agenda package provides a list of the proposed legislative priorities to be presented to the Brevard Legislative Delegation for action during the 2011 Legislative session. The priorities provide the basis for elected officials, staff, and the lobbyists to advance ideas and interests in various subsequent meetings, conferences, and consultations. Council has traditionally included endorsement of the Florida League of Cities' agenda even though it is broadly based. Council may wish to add other topics or delete topics from the list. Because of scarcity of funds at the State level, it is not recommended Council request or endorse local projects or "earmarks" through the (community budget request) process in the State legislative process.

Mr. Thomas said he would like to add an item encouraging the State of Florida to look for all opportunities to market the state and to sustain and create incentives to bring business here. Mayor Goode replied that if that is not included in the Florida League of Cities' priorities, without objection, it will be added to the City's list.

Moved by LaRusso/Nowlin for approval of the legislative priorities and transmittal to the Brevard Legislative Delegation. Motion carried unanimously.

Mayor Goode advised Council that Vice Mayor Meehan will be presenting the City's list to the Legislative Delegation.

20. PETITIONS, REMONSTRANCES, AND COMMUNICATIONS

Mayor Goode referenced the communication from Karen Harshaw, Melbourne Light Parade President, requesting a donation of \$7,000 from the City to help fund the 2010 Melbourne Light Parade. He noted that when Council provided funding for the parade last year, it was clear that we expected the parade to become a bit more prudent and to try and raise money.

Moved by Meehan/Thomas to support the light parade by paying \$7,000 from the proceeds of the Meg O'Ween event.

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Mayor Goode referenced the length of the parade, which is directly related to the cost of City services, and said that the motion should include direction that next year the organizers look at shortening the parade. He added that he does not believe the parade has done its due diligence.

Mr. Schluckebier pointed out that this group made the same request last October and the minutes note that the group was advised that this should not become a regular request. Council gave \$6,000 last year and this year they are requesting \$7,000. He noted that he understands the economy didn't get better in the last 12 months; however, the group should be advised to come in by October 1 of next year and have a direct conversation with staff about the event. Other event organizers are modifying their programs to fit within available dollars.

Mr. Thomas said that the turnout for this parade is incredible and shortening it would only create a crowd problem. He added that he does not believe it is excessively long. With regard to the cost, there are few things that the City can provide that really unites the community the way this parade and the Fourth of July parade do. He reminded everyone that during this challenging economic time, this is a free thing that a family can do.

Mrs. Meehan pointed out that the parade starts in the Babcock Community Redevelopment Area and ends in the Melbourne CRA. She would like both CRAs to look for ways to help fund this parade next year.

Mr. LaRusso asked if this is one of the parades that Council funded during the budget process. Staff responded no. (During the budget process, Council provided funding for the Memorial Day, Fourth of July, and Veterans Day Parades.)

Mr. Schluckebier said that it has been a difficult transition for some of the organizations to pay for City services in the last year. If it is Council's desire to provide funding, that can be put in an annual appropriation; however, it is awkward to have permitting and planning in limbo two weeks prior to the event because we don't know if the organizers have the money. Staff is not saying that Council should not support the parade. Staff is saying that it should be more methodical.

Mr. LaRusso said he will support the motion because it is not taxpayer dollars. The money will come from money generated at the Meg O'Ween event.

Mr. Nowlin said normally he would not support this type of funding because he feels these organizations need to start standing on their own. But since there is so much participation and viewing by our residents and the funding is coming from money collected at Meg O'Ween, he will support this. He pointed out that the Meg O'Ween money is the result of an applicant closing down public streets to have an event, so this is basically money that will be put back into the community because an applicant used part of the community's assets to make money.

Mr. Jones said he is an advocate of the parade, but he would like to see a policy developed that would require events that are going to rely on using City funding to check

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in 60 or 90 days prior to the event. This would level the playing field for everyone so that everyone knows the rules and gets a fair shot.

The question was called. Motion carried unanimously.

21. ADJOURNMENT

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

The meeting adjourned at 9:02 p.m.



City Clerk – 12/3/2010

Approved by Council: _____