

The regular meeting of the Lake Wales City Commission was held on May 20, 2008 at 6:00 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor Lee A. Wheeler, III.

#### **INVOCATION**

The invocation was given by Pastor Wallace, Trinity Baptist Church.

#### **PLEDGE OF ALLEGIANCE**

**COMMISSIONERS PRESENT:** Terrye Y. Howell; Jack Van Sickle; John Paul Rogers; Kathy Manry; Lee A. Wheeler, III, Mayor.

**COMMISSIONERS ABSENT:** None.

**CITY REPRESENTATIVES PRESENT:** Anthony G. Otte, City Manager; Albert C. Galloway, Jr., City Attorney; Judith Delmar, Asst. City Manager; Clara VanBlargan, City Clerk.

#### **Agenda Item 4. APPROVAL OF MINUTES**

Commissioner Howell made a motion to approve the minutes of the April 22, 2008 Code Enforcement Ride-a-Round Tour, the May 1, 2008 Budget Workshop meeting, and the May 6, 2008 regular meeting. The motion was seconded by Commissioner Manry.

#### **ROLL CALL:**

Commissioner Howell	"YES"
Commissioner Manry	"YES"
Commissioner Scott	"YES"
Commissioner Van Sickle	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

#### **MAYOR**

#### **RECOGNITION OF VOLUNTEERS: HIGH SCHOOL STUDENTS**

Mayor Wheeler recognized Lake Wales High School seniors who performed at least 250 community volunteer service hours. Certificates were provided to the students.

#### **Agenda Item 5. PROCLAMATION: MEMORIAL DAY, MAY 26, 2008 RECOGNITION OF VOLUNTEERS: HIGH SCHOOL STUDENTS**

#### **PROCLAMATION: MEMORIAL DAY, MAY 26, 2008**

Mayor Wheeler read a proclamation proclaiming May 26, 2008 as "Memorial Day"

#### **ADDENDUM**

**LAKE ASHTON REPRESENTATIVES TO PRESENT A CHECK TO THE LAKE WALES POLICE DEPARTMENT FOR THE PURCHASE OF TWO BICYCLES TO BE USED FOR BIKE PATROL AND THE DONATION OF A GOLF CART TO THE LAKE WALES POLICE DEPARTMENT IF NEEDED**

Representatives of Lake Ashton Home Owners Association presented to the City a check for \$1,000 for the purchase of two bicycles to be used for bicycle patrol, and the use of a golf-cart at Lake Ashton.

### **CITY MANAGER**

#### **Agenda Item 6. Ordinance 2008-11, Historic District Regulatory Ordinance – 2<sup>nd</sup> Reading & Public Hearing**

Mr. Otte reported on Agenda Item 6. The full staff memo is incorporated into the minutes.

[begin memo]

RE: Ordinance 2008-11 – 2<sup>nd</sup> Reading and Public Hearing  
Historic District Regulatory Board

### **RECOMMENDATION**

Staff recommended approval of Ordinance 2008-11 on second reading following a public hearing.

Notice requirements have been met for a public hearing.

The Planning and Zoning Board held a public hearing on the proposed regulations on November 27, 2007 and recommended approval. The City Commission approved the ordinance on first reading on May 6, 2008 following a public hearing.

### **BACKGROUND**

The ordinance establishes a historic district review board and regulations for changes to the exterior of buildings in districts established by local ordinance. A companion ordinance (2008-12) establishes a downtown historic district.

The provisions are explained in detail in the attached "Explanation and Summary."

Once the historic district review board is in place and working with downtown property owners, they may wish to make changes to the requirements. The board is empowered to adopt regulations in addition to those referenced in the ordinance. These might include color palettes or design requirements designed specifically for the downtown district. The board may also make recommendations for changes in the ordinance to streamline the review process further or expand the list of exemptions.

### **FISCAL IMPACT**

Implementing the ordinance will require additional staff time for providing support to the new board. These costs will be partially offset by proposed review fees.

### **OTHER OPTIONS**

Decline to enact the ordinance at this time or make amendments to the provisions.

[end memo]

[begin explanation and summary]

**Ordinance 2008-11 Historic District Regulatory Board Ordinance  
Explanation and Summary**

The ordinance establishes a new "historic district regulatory board" and regulations for construction within historic districts.

A "certificate of appropriateness" will be required from the board for any work to the exterior of structures within a historic district. A certificate is also required for new construction to ensure compatibility with the historic buildings. Note that the requirement for a certificate does not apply automatically to National Register properties or districts; it applies only to properties within districts established by city ordinance.

Certain types of work, including routine maintenance, are specifically exempted from the requirement for a certificate. A certificate must be issued prior to demolition; however, demolition cannot be prohibited, only delayed for the purpose of exploring alternatives.

Guidelines for review of proposed work will be the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. The historic board may also adopt guidelines specific to a historic district. Also included in the ordinance are visual compatibility standards governing building height, proportions, rhythm, textures, and colors.

The existing historic preservation board will remain in place, to continue its current duties, including undertaking historic surveys and studies, recommending historic monuments and plaques, and recommending nominations to the National Register of Historic Places. The board may also spearhead proposals for additional local historic districts.

Following the enactment of the ordinance, the city may apply for designation as a "certified local government" (CLG) under the state's historic preservation program. The designation will benefit the city by providing access to training for board members and to grant funds set aside for CLGs. Certification requires that the ordinance meets state guidelines. The state does not provide review of the ordinance prior to adoption.

#### **Specific provisions:**

Following are explanations of the provisions of the ordinance by section number.

1. **Historic District Regulatory Board**  
(Amends **Sec. 23-208** under **Administering Officials and Boards**)  
Establishes a new 5-member regulatory board to review and decide upon "certificates of appropriateness" for exterior alterations to structures within locally enacted historic districts. The section sets forth the desired qualifications for board members, the board's rules and procedures, and its powers and duties. At least 50% of the board's members must reside within or own property within the City of Lake Wales. Upon passage of the ordinance, appointments must be made to create the board.
2. **Petition for creating a historic district**  
(Amends **Sec. 218** under procedure for **Zoning Map Amendments**)  
A petition for any zoning map amendment requires the signatures of at least 51% of the owners in area proposed for change. The amendment adds a statement that the signatures must be on notarized affidavits. Note that an amendment to a district or creation of a new district may also be initiated by the city commission or planning board without a citizen's petition.
3. **Criteria for review of application for historic district**  
(Amends **Sec. 218** under procedure for **Zoning Map Amendments**)  
An application (petition) for a new historic district or a change to an existing district must demonstrate consistency with the review criteria (ref. sec. 23-652.2).
4. **Certificate of Appropriateness**  
(Amends **Sec. 227** under **Application/Approval Requirements and Procedures**)

This section requires a "certificate of appropriateness" from the historic district regulatory board for exterior work on structures within a historic district. It includes a procedure for application, review, and decisions with reference to review criteria in sec. 23.651 *et seq.*, also proposed in this ordinance. A public hearing is required except for signs.

Exempt work is listed, including ordinary maintenance and repairs, landscaping, and work determined not to be visible from a public street or walkway. Staff anticipates that the historic review board will adopt guidelines for such things as paint color in order to allow certain changes without board review.

Specifically subject to review are: alteration of the exterior part of any building or structure, installation of a new sign or alteration of an existing sign, construction of a new building or an addition to an existing building. The requirement for review of artwork has been removed at the request of the city commission.

Demolition of a structure or portion of a structure also requires a certificate for the purpose of exploring alternatives to demolition; however, demolition cannot be prohibited, only delayed for a period of 60 days. An additional 60-day delay may be approved by the city commission if criteria are found to be met.

Appeal of a decision by the historic regulatory board will be heard by the city commission per provisions in sec. 23-244 (proposed under accompanying ordinance).

**5. Fee for application for certificate of appropriateness**

***(Table 23-242 "Land Use Applications – Required Fees")***

The review fees originally proposed (\$200 and \$75 for public notice) have been reduced at the request of the city commission. The fee for sign review has been eliminated. The fee for other work is \$25 for work estimated to cost up to \$2,500 and 1% of the estimated cost of work over \$2,500, with a maximum of \$200. As with building permits, an estimate will be provided by the applicant and verified by staff to establish the fee.

**6. Reference certificate under regulations for structures**

***(Under Sec. 23-301. permit requirements for "Land and Structures")***

This section cross-references the requirements for a certificate of appropriateness, stating that a certificate of appropriateness may be required prior to the commencement of work in a historic district.

**7. Standards for historic preservation**

***(Under Article VI, Resource Protection Standards, Div. 5 Historic preservation)***

The standards for historic preservation are set forth in this new section, entitled "Historic Preservation." The section contains statements of purpose, criteria for review of proposed historic districts and modifications to districts (sec. 23-653.2), and criteria for review of certificates of appropriateness (sec. 23-653.3). It also references national criteria for nominations to the National Register of Historic Places (sec. 23-653.1).

A local district is eligible for approval if at least 40% of the structures within the area are at least 50 years old and at least one other criteria relating to historical or architectural significance is met. If the proposed district is a National Register historic district, it is automatically eligible. (Note that only properties within local districts established by city ordinance are subject to the requirement for certificates of appropriateness. National Register properties are not subject to this requirement. Only the city commission can establish a local district.)

Criteria for review of certificates of appropriateness by the historic regulatory board are found in subsec. 653.3. General "visual compatibility" standards are listed and the *Secretary of the Interior's* standards are referenced. These standards are used nation-wide to review work within historic districts. A copy of the standards will be provided to each member of the board upon appointment. The board may also choose

to expand their review criteria to include guidelines specific to a district. Expanded criteria need not be enacted in an ordinance, but can be adopted by vote of the historic regulatory board.

Specific criteria are stated for demolition applications. As noted, demolition cannot be prohibited, but can be delayed by the historic regulatory board for 60 days in cases where the building has cultural value to the community. The board may choose to allow a demolition to proceed without delay if the building is not of value.

**8. Definitions**

(Under **sec. 23-802. Definition**)

A definition of "certificate of appropriateness" is added. Many other terms relevant to the proposed ordinance are already included in the definition section.

**9. Effective date**

The ordinance becomes effective upon passage. Appointment of a historic regulatory board will be necessary for the processing of applications that may be received subsequent to the passage of the ordinance, scheduled for May 20.

[end explanation and summary]

Ms. Delmar read Ordinance 2008-11 by title only.

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 23, ZONING, LAND USE AND DEVELOPMENT REGULATIONS; ESTABLISHING THE HISTORIC DISTRICT REGULATORY BOARD AND SETTING FORTH ITS POWERS AND DUTIES; REQUIRING A CERTIFICATE OF APPROPRIATENESS FOR CONSTRUCTION OR ALTERATION OF STRUCTURES AND SITES WITHIN A LOCAL HISTORIC DISTRICT; ENACTING APPLICATION REQUIREMENTS, REVIEW PROCEDURES AND FEES FOR CERTIFICATES OF APPROPRIATENESS; PROVIDING CRITERIA FOR THE EVALUATION OF PROPOSED HISTORIC DISTRICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

OPENED PUBLIC HEARING

There were no comments made by the public.

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to adopt Ordinance 2008-11 after second reading and public hearing. The motion was seconded by Commissioner Manry.

ROLL CALL:

Commissioner Howell	"YES"
Commissioner Manry	"YES"
Commissioner Rogers	"YES"
Commissioner Van Sickle	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

**Agenda Item 7. Ordinance 2008-12, Downtown Historic District Ordinance – 2nd Reading & Public Hearing**

Mr. Otte reported on Agenda Item 7. The full staff memo from Margaret Swanson, Director of Planning and Development, is incorporated into the minutes.

[begin memo]

RE: Ordinance 2008-12 – 2<sup>nd</sup> Reading and Public Hearing  
Downtown Historic District Ordinance

## RECOMMENDATION

Staff recommended approval of Ordinance 2008-12 on second reading following a public hearing.

Notice requirements have been met for a public hearing.

The Planning and Zoning Board held a public hearing on the proposed district on November 27, 2007 and recommended approval.

## BACKGROUND

The ordinance was approved on first reading on May 6, 2008 following a public hearing. There was no public comment.

City Commission discussed the proposed historic district designation at meetings on December 4, 2007 and January 2, 2008. No changes to the district boundaries were suggested during those reviews.

The owners of property within the proposed district were mailed notices of the public hearing for first reading and public hearing.

The ordinance will create Lake Wales' first local historic district, the "Downtown Historic District" encompassing the central business district. Properties within the district will be subject to the regulations set forth in Ordinance 2008-11.

The proposed district, shown on Attachment A to the ordinance, extends from the Scenic Highway westward to First St. On the west side of First St., it includes the Dixie Walesbuilt Hotel and several buildings on the north side of Park Ave. The north boundary is the alley between Orange Ave. and Park Ave.; the south boundary is the alley between Stuart Ave. and Central Ave. The Lake Wales City Hall, a National Register property currently being renovated by Polk Community College, is not included in the proposed district, but the College has pledged to follow the Secretary of the Interior's Guidelines for the rehabilitation of historic properties.

Included in the district are twenty-six buildings identified in the 1988 "Historic Properties Survey, Lake Wales, Florida" as eligible for nomination to the National Register of Historic Places. The street numbers of these buildings are shown on the map. In 1990, a portion of the central business district was designated as a National Register Historic District (Dist. #90000732). The national district lies roughly between the Scenic Highway and Market Street and between Orange and Central Aves.

### Specific provisions:

*Preamble:* The preamble to the ordinance makes a number of statements documenting the historic significance of the proposed district with reference to criteria in the historic district regulatory ordinance (Ordinance 2008-11) being considered concurrently.

Following are explanations of the provisions of the ordinance by section number:

1. **Establish downtown historic business district**

(Under *sec. 23-401 "District classifications," subsec. d. "Overlay districts"*)

This section adds the downtown historic business district to the list of overlay districts and gives a brief explanation of the district's purpose. An overlay district superimposes regulations on top of those in place per the underlying zoning district, in this case C-1.

The flood zone is an example of another overlay district.

**2. Overlay map of downtown historic business district**  
(Under **sec. 23-402. Maps**)

This amendment adds the downtown historic business district map to the list of zoning maps the city has enacted and maintains.

**3. Effective date**

This section states that the ordinance will be effective immediately upon passage.

**OTHER OPTIONS**

Decline to designate the district at this time or modify the boundaries.

**FISCAL IMPACT**

Designation of the downtown as a local historic district will enhance property values by ensuring that exterior renovations adhere to consistent guidelines.

[end memo]

Ms. Delmar read Ordinance 2008-12 by title only.

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 23, ZONING, LAND USE AND DEVELOPMENT REGULATIONS; ESTABLISHING A DOWNTOWN HISTORIC BUSINESS DISTRICT AND ASSOCIATED MAP; AND PROVIDING FOR AN EFFECTIVE DATE.**

OPENED PUBLIC HEARING

There were no comments made by the public.

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to adopt Ordinance 2008-12 after second reading and public hearing. The motion was seconded by Commissioner Manry.

ROLL CALL:

Commissioner Howell	"YES"
Commissioner Manry	"YES"
Commissioner Rogers	"YES"
Commissioner Van Sickle	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

**Agenda Item 8. Ordinance 2008-14, Annexation: Race Trac Property, West Side of US27 North – 1<sup>st</sup> Reading**

Mr. Otte reported on Agenda Item 8. The full staff memo from Margaret Swanson, director of Planning and Development is incorporated into the minutes.

[begin memo]

RE: Ordinance 2008-14 Annexation – 2st Reading

Tedder Property – U.S. Highway 27 N.

## **RECOMMENDATION**

Staff recommended approval on first reading of Ordinance 2008-14, providing for the annexation of approximately 2 acres located on the west side of US Highway 27 N across from Starr Lake Boulevard.

A recommendation from the Planning and Zoning Board is not required for an annexation ordinance. No public hearing is required for the first reading of an annexation ordinance. Upon approval of first reading, a public hearing will be advertised for the June 4th City Commission meeting.

## **BACKGROUND**

Bryan Potts, P.E., Tannath Design, Inc., authorized agent of the owner Allen Tedder, has requested annexation of the property. Commercial development is proposed.

An ordinance assigning Zoning and Future Land Use Map designations for the property is being brought concurrently to City Commission.

“Attachment A” to the ordinance shows the property’s location. It is contiguous to the City limits on the east across US 27.

### Surrounding uses:

North: County A/RR Agricultural/Rural Residential - unimproved

South: County HIC High Impact Commercial - Flea Market Property

East: City RAC Regional Activity Center - Wendy's, Denny's, and Home Depot

West: County A/RR Agricultural/Rural Residential

## **OTHER OPTIONS**

Decline to annex the property.

## **FISCAL IMPACT**

The annexation will add to the City's tax roll.

[end memo]

Ms. Delmar read Ordinance 2008-14 by title only.

**AN ORDINANCE PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 2 ACRES OF TERRITORY, CONTIGUOUS TO THE INCORPORATED TERRITORY OF THE CITY OF LAKE WALES, SHOWN ON “ATTACHMENT A” AND SPECIFICALLY DESCRIBED HEREIN; GIVING THE CITY OF LAKE WALES JURISDICTION OVER THE LAND ANNEXED; PROVIDING FOR TAXATION OF THE TERRITORY ANNEXED; AND PROVIDING FOR AN EFFECTIVE DATE.**

## **CLOSED TO PUBLIC COMMENT**

Commissioner Howell made a motion to approve Ordinance 2008-14 after first reading. The motion was seconded by Commissioner Manry.

## **ROLL CALL:**

Commissioner Howell	“YES”
Commissioner Manry	“YES”
Commissioner Rogers	“YES”
Commissioner Van Sickle	“YES”



Mayor Wheeler

"YES"

The motion carried 5-0.

**Agenda Item 9. Ordinance 2008-15, De-Annexation: Todd Borders Property – 5 acres – 2<sup>nd</sup> Reading & Public Hearing**

Mr. Otte reported on Agenda Item 9. The full staff memo from Margaret Swanson, Director of Planning and Development incorporated into the minutes.

[begin memo]

RE: Ordinance 2008-15 – De-annexation – Todd Borders Property  
2<sup>nd</sup> Reading and Public Hearing

**RECOMMENDATION**

1. Staff recommended approval on second reading, following a public hearing, of Ordinance 2008-15, providing for the de-annexation of approximately 5 acres located on the south side of Masterpiece Road.
2. Staff also recommended that since Mr. Borders did not authorize his property to be annexed, that the Commission vote to pay Mr. Borders what he has previously paid in City taxes.

A recommendation from the Planning and Zoning Board is not required for a de-annexation ordinance. Public notice requirements have been met.

**BACKGROUND**

In May 2006, the City annexed approximately 385 acres of property at the request of the Borders' Family. The subject property was included in the legal description of the property to be annexed. Staff sent the legal description to the applicant, in this case Sun Holdings, LLC (Rich Reade) agent for the Borders Family, for verification. Mr. Reade returned the description including the subject property as complete and correct.

On April 8, 2008, Todd Borders requested in writing that his property be contracted from the city limits. Mr. Borders contends that he never authorized his property to be annexed.

Section 171.044, Florida Statutes, requires that the owners of property petition a municipality in order to be voluntary annexed by that municipality. This is the purpose of the "annexation agreement." We received no annexation agreement signed by Todd Borders.

Section 171.044 makes it the municipality's responsibility to determine that the annexation petition bears the signatures of all owners of property in the area to be annexed. Inadvertent inclusion of a parcel in the legal description of an area being annexed does not change the statutory requirement that the owner of every parcel must individually petition the municipality for annexation.

Since the City received no petition signed by Todd Borders, the annexation of his property was an error. The City should reimburse Mr. Borders for taxes that were paid as a result of this error.

**OTHER OPTIONS**

Decline to de-annex the property.

**FISCAL IMPACT**

The action will decrease the City's tax rolls. The payment to Mr. Borders of City taxes paid will be \$1,403.83 taken from the General Fund, Fund Balance.

[end memo]

Mr. Otte said that Mr. Borders had called to say that the fiscal impact as reported in the memo only included taxes paid for one year. The actual amount was closer to \$3,000 that he paid over the two years. Staff recommends approval of the ordinance plus reimbursement of Mr. Border's taxes over the two year period, with reasonable documentation that the taxes were paid.

Ms. Delmar read Ordinance 2008-15 by title only.

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, VOLUNTARILY CONTRACTING THE BOUNDARY OF THE CITY BY DEANNEXING THAT CERTAIN PROPERTY OWNED BY TODD E. BORDERS AND ELIZABETH A. BORDERS, DESCRIBED HEREIN CURRENTLY LYING WITHIN THE CORPORATE LIMITS OF THE CITY OF LAKE WALES; AND PROVIDING FOR AN EFFECTIVE DATE.**

OPENED PUBLIC HEARING

John Caraway, resident, asked if this ordinance would be setting a precedent. Mayor Wheeler told him that this was simply a correction of an error, as Mr. Borders had not requested to be annexed.

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to adopt Ordinance 2008-15 after second reading & public hearing and reimburse Mr. Borders for two years of taxes paid in err, with reasonable documentaion. The motion was seconded by Commissioner Van Sickle.

ROLL CALL:

Commissioner Howell	"YES"
Commissioner Van Sickle	"YES"
Commissioner Rogers	"YES"
Commissioner Manry	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

**Agenda Item 10. Ordinance 2008-16, FY-07'08 Budget Amendment #2 – 2<sup>nd</sup> Reading & Public Hearing**

Mr. Otte reported on Agenda Item 10. The full staff memo is incorporated into the minutes.

[begin memo]

#### **RECOMMENDATION**

It was recommended that the City Commission approve Ordinance 2008-16 after second reading and public hearing.

#### **BACKGROUND**

Ordinance 2007-40 estimating revenues and appropriating funds for Fiscal Year 2007-08 was adopted by the City Commission on September 18, 2007 and amended by Ordinance 2008-02 in January 2008. We are presenting for first reading a second amendment of Ordinance 2007-40 to modify the estimates of

revenues and appropriations budgeted in various funds. Exhibits A and B and supporting attachments provide the detail for the proposed amendment. This budget amendment is based on financial reports for the accounting period ending on 3/31/08. The following is a summary of changes to the budgets previously adopted for each fund. A number in parentheses indicates that the budget has been reduced, while a number without parentheses indicates that the budget has been increased.

Revenues & Balances Fwd	Increase(Reduction)
General Fund	(17,664)
Special Revenue Funds	2,915,896
Debt Service Fund	0
Capital Projects Fund	200,000
Airport Fund	62,230
Utility System Fund	1,645,155
Total Increase(Reduction) of Revenues & Balances Fwd	4,805,617
Appropriated Expenditures & Reserves	
General Fund	(7,385)
Special Revenue Funds	1,817,452
Debt Service Fund	0
Capital Projects Fund	473,846
Airport Fund	62,230
Utility System Fund	1,725,155
Reserves	734,419
Total Increase(Reduction) of Appropriated Expenditures & Reserves	4,805,717

The proposed budget amendment increases the City's total budgeted expenditures by \$4,071,298 and increases reserves by \$734,319, for a net increase in appropriated expenditures and reserves of \$4,805,617 (from \$67,544,174 to \$72,349,791).

A detailed chart showing all of the changes in expenditure budgets for each fund with revenue offsets, if any, is provided on the pages immediately following this memo. Briefly, however, the proposed budget amendment is necessary for several reasons:

- 1) To adjust General Fund revenue budgets to reflect a projected \$168,874 shortfall and to reduce expenditure budgets to offset this revenue shortfall in order to avoid a draw-down of fund balance
- 2) To adjust the Library Fund revenue budget to reflect a \$5,705 shortfall in revenue from the Polk County Library Cooperative and to offset this shortfall with a reduction of budgeted book purchases
- 3) To adjust the Utilities Fund revenue budget to reflect a \$228,844 shortfall in revenue from water and sewer service charges and the addition of \$370,360 in unbudgeted revenue (\$358,488 from the Oakley settlement and \$11,872 in insurance proceeds); after

offsetting the revenue shortfall, these additional revenues cover a \$141,516 budget increase in professional services fees and wastewater treatment plant safety lighting improvements

- 4) To transfer appropriations from line items where surpluses are projected to line items where shortfalls are projected (these are typically transfers between a department's payroll, operating or capital budgets, for example, or between departments within a fund); a total of \$102,792 in appropriations are transferred in this amendment, resulting in no change to the bottom line
- 5) To authorize expenditure of \$645,321 in grant funds not previously authorized (including the \$350,000 CSX building renovation grant and the \$200,000 grant for the Rails-to-Trails extension)
- 6) To authorize expenditure of \$441,192 in impact fees not previously authorized (including \$133,000 local match for the Rails-to-Trails extension, \$80,000 payment to the developer for Brookshire off-site improvements, and \$85,466 for the purchase of police vehicles for patrolling construction sites and other areas of new development in the northern part of the city)
- 7) To authorize expenditure of \$10,590 in donations (including \$9,500 in funding for curator position)
- 8) To record the full proceeds of the \$9.5 million CRA bond (only the \$6,971,000 budgeted for expenditure in this fiscal year was recorded in the adopted budget); the increase in reserves referenced at the top of this page is the result of the recording of \$2,528,000 in additional bond proceeds, less transfers to the Utilities Fund for improvement projects included in the budget amendment and noted in the following paragraphs
- 9) To authorize the FY 07'08 transfer from the CRA to the Utilities Fund of \$300,000 in bond proceeds for asbestos pipe removal; this project was previously planned for FY 08'09
- 10) To authorize the transfer of \$1,203,639 from the CRA to the Utilities Fund for the Downtown Water Main Extension Phase 1 project. These funds were set aside in FY06'07 for debt service payments on the CRA Bond; however, because the bond was not issued until the current fiscal year, these funds remained in fund balance and may be used to pay the cost of this project.
- 11) To authorize the expenditure of \$42,300 for environmental services in regards to the sale of the Cooperative Fruit Property

Regarding the curator position, the donation of \$9,500 provides funding of the position for an additional 11 weeks after March 31. Funding status is shown below:

	Salary	Benefits	Total
Cost for 12-months, full-time	30,979	11,838	42,817
Less 6-month funding (adopted budget)	(15,489)	(5,922)	(21,411)
Less \$9,500 Historic Society Donation	(6,709)	(2,791)	(9,500)
Remaining funding required thru 9/30/08	8,781	3,125	11,906

The \$9,500 donation is included in the proposed budget amendment, but the remaining funding requirement of \$11,906 is not.

In considering whether to fund the balance required, the Commission must take into account that our fund balance forward at 9/30/07 was \$876,471 –nearly \$50,000 less than fund balance at 9/30/03. This amendment reduces excess revenues budgeted for return to fund balance at 9/30/08 by \$10,279 from \$80,172 to \$69,893. This return to fund balance depends on the City receiving 100% of budgeted revenues while spending exactly what is budgeted and no more.

After accounting for changes in budgeted expenditures resulting from this proposed amendment and using financials at 4/30/08, we are projecting expenditures under budget at 9/30 in the amount of \$47,499. This number is calculated by subtracting an overage of \$41,492 in operating expenses from a savings of \$88,992 in payroll costs. The savings in payroll are due primarily to a projected \$72,794 savings in the fire department's payroll because 3 budgeted firefighter positions (funded by increased fees from Polk County for providing fire service outside the City limits) remained vacant for most of the first half of the year.

The difference between the \$127,625 in expenditures under budget projected with the March 31 financial statements and the \$47,499 projected now is the result of thirty days of expenditure activity plus revised fuel cost projections. Analysis included with the financial statements for April 30 (Agenda Item 18, Chart 1) indicates that the City as a whole will be \$132,129 over budget in fuel expense, and that the General Fund will be \$98,874 over budget.

It should be stressed that this \$47,499 under-budget projection is the only cushion we have at this time to cover any unanticipated expenses, revenue shortfalls, emergency purchases, or increases in fuel costs beyond current projections for the remainder of the year. With almost 42% of the year ahead of us, it is risky to assume that we will maintain this cushion through September.

#### **OTHER OPTIONS**

Most of the budget amendment is not optional. Much of the amendment incorporates items into the adopted budget that have been approved by the City Commission since October 1 or re-appropriates funds that were approved but not expended in FY06'07 because projects were incomplete at 9/30/07. Expenditure budget reductions to offset revenue shortfalls are required, but the specific expenditures reductions may be modified.

#### **FISCAL IMPACT**

See Exhibit A and Exhibit B attached to Ordinance 2008-16.

[end memo]

Ms. Delmar read Ordinance 2008-16 by title only.

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING ORDINANCE 2007-40 AS AMENDED BY ORDINANCE 2008-02 TO FURTHER MODIFY THE ESTIMATES OF EXPENDITURES FOR THE OPERATION OF THE SEVERAL DEPARTMENTS OF SAID CITY FOR THE 2007-2008 FISCAL YEAR AND TO FURTHER MODIFY THE APPROPRIATION OF FUNDS RAISED AND COLLECTED FROM ALL SOURCES, SET FORTH IN THE ESTIMATE OF REVENUES FOR SAID FISCAL YEAR; REPEALING ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.**

#### **OPENED PUBLIC HEARING**

There were no comments made by the public.

#### **CLOSED PUBLIC HEARING**

Commissioner Howell made a motion to adopt Ordinance 2008-16 after second reading & public hearing.

The motion was seconded by Commissioner Van Sickle.

ROLL CALL:

Commissioner Howell	"YES"
Commissioner Van Sickle	"YES"
Commissioner Rogers	"YES"
Commissioner Manry	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

**Agenda Item 11. Ordinance D2008-01, CPA/Zoning: Race Trac Property, West Side of US 27 North – 1<sup>st</sup> Reading & Public Hearing**

Mr. Otte reported on Agenda Item 11. The full staff memo from Margaret Swanson, Director of Planning and Development, is incorporated into the minutes.

[begin memo]

RE: Ordinance D2008-01 CPA/Zoning: 1<sup>st</sup> Reading and Public Hearing  
Tedder Property – West Side of US 27 N

**RECOMMENDATION**

Staff recommended that the City Commission approve, following a public hearing, a first reading of Ordinance D2008-01.

Notice requirements for a public hearing have been met.

The Planning and Zoning Board held a public hearing on April 22, 2008 and voted unanimously to recommend a change in the land use designations on the subject property from Polk County Future Land Use designations HIC - High Impact Commercial to City of Lake Wales Future Land Use designation RAC- Regional Activity Center and Zoning Map designation C-3 Commercial.

Notice requirements for a public hearing have been met.

**BACKGROUND**

The ordinance proposes land use designation changes for approximately 2 acres of property located on the west side of US 27 across from Wendy's and Home Depot. Ordinance 2008-14, being processed concurrently, provides for annexation of the property.

**See Attachment A to the ordinance for location and land use designations.**

Since the property is under 10 acres in size, the amendment for a Future Land Use Map designation can be approved by the City as a "small scale" comprehensive plan amendment without review by the state's Department of Community Development. Upon approval of the first reading, the ordinance will be scheduled for a second reading public hearing at the June 4<sup>th</sup> City Commission meeting. As a small-scale amendment, it will not be counted as one of the two amendments allowed per year.

Proposed development: A Racetrac gas station and convenience store are proposed for the site.

The property is located adjacent to the City's RAC – Regional Activity Center, the most intense commercial designation of the Future Land Use Map. The RAC allows a full range of commercial uses and is an appropriate designation for the proposed use.

Surrounding land use and land use designations:

Surrounding uses:

North: County A/RR Agricultural/Rural Residential - unimproved

South: County HIC High Impact Commercial - Flea Market Property

East: City RAC Regional Activity Center - Wendy's, Denny's, and Home Depot

West: County A/RR Agricultural/Rural Residential

Site access:

Access to the site is from US 27 at the traffic signal at Starr Lake Boulevard.

Potable/Wastewater Flow:

The gas station will use approximately 600 gpd based on historical data from similar size stores.

[end memo]

Ms. Delmar read Ordinance D2008-01 by title only.

**AN ORDINANCE OF THE CITY OF LAKE WALES, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN AND THE ZONING MAP TO CHANGE LAND USE DESIGNATIONS ON 2.08 ACRES OF LAND, LOCATED ON WEST SIDE OF US 27 NORTH OF THOMPSON NURSERY ROAD, FROM POLK COUNTY FUTURE LAND USE DESIGNATION HIC - HIGH IMPACT COMMERCIAL TO LAKE WALES FUTURE LAND USE DESIGNATION RAC - REGIONAL ACTIVITY CENTER AND ZONING DESIGNATION C-3 HIGHWAY COMMERCIAL; PROVIDING FOR AN EFFECTIVE DATE.**

OPENED PUBLIC HEARING

Tom Sullivan, Orlando Attorney representing Race Trac, said he was available to answer questions. Commissioner Van Sickle said that in Lake Ashton where he lives, many of the residents have motor homes. He asked if there would be diesel fuel at the new Race Trac. Mr. Sullivan said some Race Trac stations did have diesel fuel, and he would take that comment under advisement, accommodating the request if possible.

CLOSED PUBLIC HEARING

Commissioner Manry made a motion to approve Ordinance D2008-01 after first reading and public hearing. The motion was seconded by Commissioner Van Sickle.

ROLL CALL:

Commissioner Manry	"YES"
Commissioner Van Sickle	"YES"
Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

**Agenda Item 12. Feltrim Development: Revised Master Site Plan & Preliminary Planned Development Phases, East Side of US27 @ Hunt Brothers Road – Public Hearing**

Mr. Otte reported on Agenda Item 12. The full staff memo from Margaret Swanson, Director of Planning and Development, is incorporated into the minutes.

[begin memo]

RE: Mayfair- Revised PDP Master Plan and Preliminary PDP Plans for 5 Phases  
East Side of U.S. Highway 27 S. – Public Hearing

## **RECOMMENDATION**

Approval with conditions of the revised Master Plan for "Mayfair" and preliminary Planned Development Project (PDP) and subdivision plan approval with conditions for phases 6, 7, 8, 9, and 11.

The Planning and Zoning Board held a public hearing on the Mayfair PDP on April 22, 2008 and recommended approval with conditions, as attached. Staff also recommends a modification of condition #6d concerning the construction of the roadway to the adjacent soccer park.

Notice requirements for a public hearing have been met.

## **BACKGROUND**

Mayfair is a mixed use development on approximately 350 acres located on the east side of U.S. Highway 27 South, across from Longleaf Business Park. State Road 60 is less than a half mile to the north. The land, formerly called the Cooperative Fruit property, was sold to the developer, Feltrim Development, N. A. An agreement between the City and Feltrim provides the basis for development of the property.

The engineer for the project is Dave Schmitt Engineering Inc.

Advance information provided on May 9, including the staff report to the Planning and Zoning Board, provides additional data and details on the development.

The PDP process allows waivers of development regulations provided the resulting project is superior to a standard subdivision. Waivers granted for the Mayfair development allowed the development to be designed around a central park rather than locating small parks in each neighborhood. Reduced lot sizes were also approved with a requirement that increased common open space is provided to compensate for smaller yards.

### **Prior approval:**

A master plan was approved for Mayfair on November 7, 2006, along with preliminary PDP plans for several phases. A number of waivers were granted, and conditions were attached to the approval of the master plan and each preliminary PDP plan.

The master plan showed 14 phases, including a town center, 1024 residential units, and 8 commercial out-parcels. Preliminary PDP plans were also approved for several phases, including the northern portion of the town center and a total of 249 residential units.

### **Approved phases:**

- 1 Owens Road entrance
- 2 North portion of town center with commercial, 48 town homes and 43 apartments.
- 3 Central park with clubhouse
- 6 Single family 73 lots
- 7 Single family 85 lots
- 14N Hotel parcel, restaurant parcel, and third parcel with no layout

### **Plans now requested for approval:**



- Revised master plan  
Changes the number of units in some of the phases, with a net loss of 2 units.  
Modifies layouts of phases 6, 7, 8, 9 and 12.  
Changes First Street entrance
- Preliminary PDP/subdivision plans for  
Phase 8 (144 single-family lots)  
Phase 9 (74 single-family lots) and 11 (78 townhouses)
- Revised layouts for phases 6 (73 single-family lots) and 7 (92 single-family lots)

**The site:**

The majority of the property is on the north side of Hunt Brothers Road. One commercial parcel (Phase 5) is located south of Hunt Brothers Road. To the west are U.S. Highway 27 and Miami St., and to the east is First Street. Russell Ave. runs along the north. Existing roadways within the property are Owens and Ray Martin Roads.

The property is for the most part abandoned citrus grove with some stands of oaks and other mature trees. There are several ponds and wetlands within the property. To the east are Lake Belle and Tractor Lake. The City's new soccer park, located on the north side of Hunt Brothers Road was part of the Cooperative Fruit property.

**Zoning/Future Land Use:**

The majority of the site is designated on the Future Land Use Map as MDR-Medium Density Residential (up to 6 units/acre) and Zoned R-1A Single-family residential (min. lot size 12,000 sq. ft.). Twenty acres along Owens Rd. at U. S. 27 is designated NAC-Neighborhood Activity Center and C-5 Village Center. A 10-acre parcel on the northeast corner of Hunt Brothers Rd. and a 3.5-acre parcel on the southeast corner are designated BPC-Business Park Center and C-3 Highway Commercial. About 11 acres on the south side of Hunt Brothers Rd. is designated Conservation.

**Master plan:**

Reduced copies of the approved master plan and proposed revision have been provided for comparison. The first plan in the set of large plans shows the proposed revision.

The development is designed around a town center at Owens Rd. and a 27-acre central park. The central park is located to preserve a number of mature oaks and other trees. The main entrance is proposed at Owens Rd. and US 27. Two other entrances are proposed at Hunt Brothers Rd. and First Street.

Proposed are over 1,000 units of residential, including approximately 650 single-family lots, 126 town homes, 150 condominiums, and 86 apartments. Also proposed is a town center featuring commercial space with apartments above and 5 commercial out-parcels along the highway. Three additional commercial out parcels are located at the intersection of Hunt Brothers Rd.

Single-family lots in phases 6, 7, 8, and 9 will be about 8400 sq. ft. in size. The reduction in lot size from the required 12,000 sq. ft. minimum will require a commensurate increase in common open space. Phase 11 will have 78 town houses designed in the same manner as those in the town center (Phase 2 – previously approved).

Phase 12, also a single-family neighborhood, is a neo-traditional layout with small lots (min. frontage 40' and lot size 5280 sq. ft.) and rear alley access. This phase is not being considered for approval at this time. Phase 10, also not being considered for approval at this time, is proposed for 150 condominiums.

**Modifications proposed to master plan:**

- Roadway layouts have been modified in phases 7, 8, 9, and 12. A minor change was made in lots at the cul de sac in phase 6. Lots and parks have been modified because of the roadway changes, most noticeably in phase 12 and phase 8 at the First St. entrance.
- First Street entrance – Ray Martin Rd. has been moved to the north, six lots have been added along the south side of the road, and retention ponds have been added on each side of the entrance. A modification of the layout of phase 8 has reduced the distance from the First St. intersection to the first side street to approximately 150 feet. The minimum distance required is 400 feet for a development of this size. A waiver has been requested.
- Soccer park road – The roadway running along the north and east sides of the soccer park has been modified to show “stubbed out” roads from the Mayfair development side and the Hunt Brothers Rd. side. The original master plan showed a through road.

#### **Preliminary PDP/subdivision phase plans:**

Preliminary plan approvals are requested for phases 8, 9, and 11. Revisions of phases 6 and 7 are also requested. The preliminary plan serves as a basis for engineering plans (for a site development permit) and for a final subdivision plat.

Proposed single-family lots average 8360 square feet in size.

- Phase 6 revision – 73 single-family lots; minor roadway modifications
- Phase 7 revision – roadway modification and change in number of lots from 85 to 92
- Phase 8 – 144 single-family lots (original master plan showed 148 lots)
- Phase 9 – 74 single-family lots (original master plan showed 76 lots)
- Phase 11 – 78 town homes along Owens Rd.

#### **Staff comments:**

Several issues were discussed by the Planning and Zoning Board and modifications of conditions of approval are recommended to address them.

The changes at the First Street entrance on the master plan are of concern to staff and the Planning Board because they reduce the quality of the entrance design. The approved master plan showed no lots fronting on the entrance road, while the proposed plan shows six lots. The addition of retention ponds on both sides of the entrance is an aesthetic issue; retention ponds are difficult to make attractive. A number of mature trees will have to be removed for construction of the ponds, detrimental to the appeal of the trails proposed along Lake Belle. In addition, the roadway changes in phase 8 caused by the retention pond siting reduce the distance between the entrance at First St. and the first side street, necessitating a request for a waiver of the minimum distance requirement. Specifics on these changes follow:

1. Distance to side street at First St. entrance: Reconfiguration of phase 8 streets reduced the distance from First St. to the first cross street from 400 to 150 feet. Code (sec. 23-303.4.a.1.) requires a distance of 400 feet for a project of this size. A waiver is recommended by Planning Board.
2. Retention areas at First St. entrance – There are several concerns with the location of retention areas at the entrance with the lots on the Lake Belle side of the entrance road. First, retention areas are not attractive features. A recent amendment to our ordinance to address this problem requires a 25-ft. wide landscaped area on retention areas where they are adjacent to travelways. However, the appearance of these areas at an entrance is a concern. The same problem is presented with the retention area at First St. and Russell Ave., a highly visible spot. In addition, mature oak trees will be removed to accommodate the retention area on the south side of the entrance and the roadway. The Planning Board recommends that a landscaping plan for the entrance be required prior to site development permit issuance. The plan should show what trees are to be removed. (See proposed condition #26e.)
3. Pedestrian circulation system – The Planning Board recommends that prior to the application for site development of any residential phase, administrative approval of a pedestrian circulation plan should be required. A good plan showing trails (see master plan.) has not been provided, and it is not clear how the connections to the sidewalk system are to be made. (See proposed modifications to

- condition #10.) It is also recommended that all trails be above the wetland line.
4. Wetlands – The engineer has stated that no lots will be within wetland areas. A recent amendment to the code prohibits required lot area to extend into wetlands or water. The Planning Board recommends that verification of compliance be required with site development application review. (See proposed modification of condition #11.)
  5. Soccer park road – Based upon a request by Feltrim, the developer, for a roadway connection, Ray Martin Rd. is to be constructed by the developer along the northern and eastern boundary of the City park with phase 10 or 11, whichever is constructed first. (See Condition #6d.) The first 150 feet of the road measured from Hunt Brothers Rd. was to be constructed by the developer by September 2007. This condition has not been met, and the revised plan shows “stubbed out” roads at Hunt Brothers and at the northwest corner of the park with a small parking area. The Planning and Zoning Board did not make a recommendation to change the condition on the roadway since it involves the development of the park, not under their purview. Staff recommends approval of the “stubbed out” roads, provided a parking lot is constructed at the northern end of the park and a bike path is constructed to connect the two “stub outs.” The details of the layout need to be left open at this time so that staff can determine the best layout for park functionality.

#### **Conditions of approval:**

Conditions recommended by the Planning and Zoning Board are attached. They are provided in a strike out/underline format to show the changes from the conditions on the prior approval.

As previously noted, staff recommends an amendment to condition #6d. Suggested wording:

The roadway from the east end of Owens Rd. to the soccer park is to be constructed by the developer with phase 9. The road will terminate on the north side of the soccer park and include a parking area equivalent to that shown on the revised master plan. An 8-ft. asphalt trail shall also be constructed by the developer with phase 9 to extend along the north and east sides of the park to connect the referenced parking area with the park entrance road from Hunt Brothers Rd. The park entrance road, measuring 150 feet from Hunt Brothers Rd., shall be constructed by the developer simultaneously with phase 1 (Owens Rd.). Staff approval of a plan showing the specific layout and location of these features is required prior to the issuance of a site development permit for phase 1.

#### **OTHER OPTIONS**

City Commission may choose to modify the conditions recommended by the Planning Board and staff.

#### **FISCAL IMPACT**

The development will add to the City's tax base.

[end memo]

#### **OPENED PUBLIC HEARING**

Judy Stewart, Project Manager for Dave Schmitt Engineering, introduced Greg Brown from Feltrim and Dave Schmitt, engineer. She updated the Commission on where they were on the project and stated the applicant is in agreement with the staff recommendations.

Mayor Wheeler asked if they were mitigating the acre of wetland and Ms. Stewart said yes.

Mr. Otte asked if she knew when the 150-foot entrance road to the soccer park would be constructed. Ms. Stewart said she did not know a specific time as of yet. Mr. Otte reminded her that the conditions of approval required the entrance to be completed by September 2007 and that the new Soccer Park is set to open by September 2008. If we do not have the entrance completed, it will cost the City about \$10,000 to put in a temporary road, which the City wants to avoid. He said he would like to have some assurance

that the entrance will be completed before the Soccer Park opens. Mr. Brown said he agreed with the conditions but he could not give a timeframe for the entryway as this was controlled by others. He said that getting a loan right now is difficult, though he has a meeting scheduled that might mean things are beginning to loosen up and move forward.

City Attorney Chuck Galloway said that since there is no commitment by Feltrim to take care of the road within the timeframe needed to open the Soccer Park, perhaps Feltrim would consider reimbursing the City for the expense in building a temporary road. Mr. Brown said that they would not have a problem with that condition in order to let the Soccer Park be opened on time, as long as there is a dollar cap in place.

John Caraway, resident, spoke in opposition to the development and said the Commission did not know what they were approving. Commissioner Manry said they have been studying this for the past two years. Mr. Otte said the Commission approved the Master Plan in 2006. He said that since then, Feltrim came back with different phases and then revised the Master Plan. Mr. Caraway said that Bob Kelly had a contract with the City for that property and the City sold it to someone else. Harold Gallup, Economic Development Director, explained that Feltrim alone had a contract for that property and that Bob Kelly never had a contract. There had never been another contract. The Feltrim sale price of \$3.5 million was \$1 million more than originally agreed. Mr. Otte said he would be happy to talk to Mr. Caraway about his concerns.

Peggy Ice, resident, asked how much water this large subdivision would be using. Mr. Otte said the estimated daily flow is 15,000 gallons a day for Phases 1,2, 3, 6, 7, and 14. Ms. Ice asked if the water permit had been approved for that much water, seeing that the City is in the midst of a drought. Mr. Otte explained that in the last 2 years the City has been seeking approval for higher water use and that in the next few weeks we should have a small increase in our permit. He said that City staff spoke with SWFWMD about a month ago and they welcomed us to put in for a larger increase. Mr. Otte said that this development irrigate with reuse water from the wastewater treatment plant, which will cut down significantly the amount of potable water used. He said that all new development south of State Road 60 will have a reuse water system, which will significantly help to spread our permitted water use. Ms. Ice questioned the roadways in Mayfair and Mr. Otte explained that the roads will be in a Community Development District and therefore residents will be responsible for their own streets.

Commissioner Manry made a motion to approve with conditions as recommended by staff the revised Master Plan for "Mayfair", the preliminary Planned Development Project (PDP) and subdivision plan approval with conditions for Phases 6, 7, 8, 9, and 11. The motion was seconded by Commissioner Howell.

ROLL CALL:

Commissioner Manry	"YES"
Commissioner Howell	"YES"
Commissioner Van Sickle	"YES"
Commissioner Rogers	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

**Agenda Item 13. Resolution 2008-09, Florida Boating Improvement Program Grant for Aquatic Shield LLC and Bioril LLL**

Mr. Otte reported on Agenda Item 13. The full staff memo is incorporated into the minutes.

[begin memo]

**RECOMMENDATION**

Staff recommended that the City Commission authorize the Mayor to execute a Resolution endorsing the application for a Grant through the Florida Boating Improvement Program in the amount not exceeding Four Hundred Thousand (\$400,000.00) as non-monetary matching Grant for technical research and product development of environmentally friendly hull coatings for water quality improvements."

## **BACKGROUND**

The consortium composed of Aquatic Shield, LLC and Bioril LLC are based here in Lake Wales at Taylor Industrial Coatings an existing industry. The company has over the last year or so been involved in developing "environmentally friendly hull coatings to be used on boats, barges and other water craft in salt water, fresh water and brackish water. The company has reached a point in the development of the technology whereby it is not eligible for a grant from the Florida Boating Improvement Program. The Grant requires that a municipality be the vehicle for receiving the Grant for the company. The In-Kind Costs required are limited to the City, Department of Economic Development, working with the company to review reports and data on the development as they report to the State and dispersing funds or authorizing the disbursement of funds from the Grant for continued research and development. This Grant does not require monetary matching funds. This will be our first "Technical Grant" for an existing industry in Lake Wales. If the company receives the Grant and the product moves into production after testing then the industry will be adding jobs and making investment in the production plant for the product.

## **CURRENT FISCAL IMPACT**

Impacts on Revenue—None

Impacts on Expenditures-None

## **OTHER ALTERNATIVES**

Do not authorize the Resolution, but that will eliminate the company from competition for the Grant

[end memo]

Ms. Delmar read Resolution 2008-09 by title only.

## **A RESOLUTION OF THE CITY OF LAKE WALES EXPRESSING SUPPORT FOR THE FLORIDA BOATING IMPROVEMENT PROGRAM; AUTHORIZING A GRANT APPLICATION TO THE PROGRAM; PLEDGING IN-KIND SERVICES FOR THE REQUIRED MATCH FOR THE GRANT; PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Wheeler asked if this would affect our bonding. Mr. Otte said it would not because it was a grant. Commissioner Manry asked whom the grant was through. Mr. Gallup, Economic Development Director, said it was a State grant through the Florida Boating Improvement Program and explained the program and its importance to the water environment in the City. He said we were applying to compete for a portion of the existing funds from this program. Mayor Wheeler wanted assurance that the match was in-kind and did not require a financial match. Mr. Gallup explained that the in-kind services would be in the form of his time in working on the project.

Commissioner Manry made a motion to approve Resolution 2008-09. The motion was seconded by Commissioner Howell.

## **ROLL CALL:**

Commissioner Manry	"YES"
Commissioner Howell	"YES"
Commissioner Van Sickle	"YES"
Commissioner Rogers	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

**Agenda Item 14. Election Dispute filed by Hubert E. Becker in the 10<sup>th</sup> Judicial Circuit Court in and for Polk County, Florida**

Mr. Otte reported on Agenda Item 14. The full staff memo is incorporated into the minutes.

[begin memo]

Hubert E. Becker, elector, qualified to vote in Lake Wales municipal election of April 1, 2008, and taxpayer residing in the City of Lake Wales,

Plaintiff,

vs.

Lori Edwards, Polk County Supervisor of Elections; City of Lake Wales Canvassing Board consisting of Clara VanBlargan, City Clerk, Kathy Manry and Jack Van Sickle, City Commissioners,

Defendants.

Case No. 2008CA-003395  
Section: 08

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**RECOMMENDATION**

The City Attorney will provide a report on the options listed below.

**BACKGROUND**

The above captioned election dispute was filed contesting the election of Commissioner John Paul Rogers. As counsel for the City, I filed a Motion to Quash Service of Process on Commissioner Manry, Commissioner Van Sickle, and the City Clerk. These persons were incorrectly named as individuals and service on each of them was insufficient when made on Jacquie Hawkins as Deputy City Clerk.

The Court granted the Motion to Quash, and in so doing inquired as to whether I would accept service of process for the City Commission. I advised the Court that I could only do so as City Attorney after receiving permission from the Commission in public at a Commission Meeting. I further advised that I would seek permission to do so as requested by the Court.

I also filed a Motion to Dismiss for Failure to Join an Indispensable Party and Failure to Join the Correct Party Defendant. The Court found the City properly named as the City of Lake Wales Canvassing Board and further found that Commissioner Manry, Commissioner Van Sickle, and the City Clerk, Clara VanBlargan are not Defendants in their individual capacity.

The Court then granted the Motion to Dismiss for failure to join an indispensable party defendant. The Florida Statute governing election disputes defines the successful candidate as an indispensable party to this type of action. Commissioner Rogers was not named and the Court thus lacks jurisdiction to proceed without him.

The Order granting the Motion to Dismiss provides that the Defendant shall have twenty (20) days from the date of entry of the Order in which to file an amended pleading.

## OPTIONS

The City Commission may allow me to accept service of the Amended Complaint on its behalf, if filed, or may decline to do so leaving the Plaintiff to accomplish service in compliance with the statutory requirements.

## FISCAL IMPACT

The cost of legal fees, not currently known, for this representation.

[end memo]

Mr. Galloway explained the reason behind his motion to quash, motion to dismiss, and the reason for him to accept the amended complaint by mail and respond on behalf of the Mayor and Commission, if an amendment is filed by Mr. Becker.

Commissioner Howell made a motion to approve the City Attorney's acceptance of service on their behalf. The motion was seconded by Commissioner Manry.

## ROLL CALL:

Commissioner Howell	"YES"
Commissioner Manry	"YES"
Commissioner Rogers	"NO"
Commissioner Van Sickle	"NO"
Mayor Wheeler	"YES"

The motion carried 3-2.

## **Agenda Item 15. FDOT Presentation: Constructing Raised Grass Medians on SR60 from 11<sup>th</sup> Street to the Eastern City Limits [Agenda Item Withdrawn]**

Agenda Item 15 was withdrawn from the agenda.

Mr. Otte explained that this item had been put on the agenda at the request of the Florida Department of Transportation, and had been withdrawn by them. The presentation was to inform the Commission of FDOT's plans for putting raised, grass medians on SR 60 from 11<sup>th</sup> Street past the city limits on SR60. He said that a copy of the aerial plan is available for review in the Planning Office and in the Commission mailroom.

## **Agenda Item 16. Discussion of Fireworks for July 4<sup>th</sup> Weekend**

Mr. Otte reported on Agenda Item 16. The full staff memo is incorporated into the minutes.

[begin memo]

## RECOMMENDATION

City staff will make a report on this item at the meeting.

## BACKGROUND

The current fiscal year budget does not allocate funding for fireworks for July 4<sup>th</sup>. City staff has been exploring the possibility of corporate interests donating funds for the fireworks. If this were feasible, the

celebration would probably have to be held on Saturday, July 5<sup>th</sup>. City staff will continue to explore this matter and will provide a report at the Commission meeting.

#### **OPTIONS**

There are no funds allocated for fireworks.

#### **FISCAL IMPACT**

The basic fireworks display costs \$12,000.

[end memo]

Mr. Otte said that the company that provided the display last year had told him that a minimum show displayed on the 4<sup>th</sup> of July would cost about \$15,000, whereas the same show displayed on July 5<sup>th</sup> would be \$12,000. He said that the City has already received about \$10,500 of the \$12,000 in pledges and cash. Mr. Otte recommended that the City Commission take the risk in contracting for the 5<sup>th</sup> of July, posting fliers, contacting news media, and hiring Parties by Robert for \$500, which is \$100 less than what he charged last year. He said that we would then seek donations for the other \$2,000 by July 5<sup>th</sup>. Commissioner Howell asked if we could change to July 4<sup>th</sup> if we found we were able to raise the \$15,000 needed. Mr. Otte said no because the company needs time to schedule the crew and order the fireworks. Mayor Wheeler said he wondered if the crowds would be less on the 5<sup>th</sup> of July than it would be on July 4<sup>th</sup>. Mr. Gallup said that it would still be held over the 4<sup>th</sup> of July weekend and with proper advertisement, he said he believed the City would have a good turnout. Commissioner Manry asked if anyone checked to see if Cypress Gardens was having fireworks and Mr. Otte said they were having theirs on July 4<sup>th</sup>.

Commissioner Howell made a motion to approve contracting for the fireworks display on July 5<sup>th</sup> and hiring Parties by Robert for \$500. The motion was seconded by Commissioner Manry.

#### **ROLL CALL:**

Commissioner Howell	"YES"
Commissioner Manry	"YES"
Commissioner Rogers	"YES"
Commissioner Van Sickle	"YES"
Mayor Wheeler	"YES"

The motion carried 5-0.

Mr. Otte commended Harold Gallup for his work on this project.

#### **Agenda Item 17. Appointment: Airport Authority Board**

Mr. Otte reported on Agenda Item 17. The full staff memo is incorporated into the minutes.

[begin memo]

#### **RECOMMENDATION**

It was recommended that the City Commission make the appointment as it deems appropriate.

#### **BACKGROUND**

Vacancies exist on various Boards, Commissions, and Committees due to resignations, expirations of terms, newly established boards, etc. The City Commission is asked to make the appointment as it deems appropriate.



**Airport Authority Board**– Members are appointed by the City Commission. The Board consists of seven (7) members. At least four (4) members must be qualified electors of the City. (3-year term)

This appointment is for a non-resident member.

One (1) vacancy term expires 07/01/09 (partial term); non-resident

Applying for Appointment: John "Philip" Weikert, non-resident  
Dale W. Marks, non-resident

A vacancy exists on the Airport Authority Board because Joseph F. Miranda automatically vacated his seat in January 2008 by having unexcused absences from three consecutive Board meetings.

At its regular meeting on May 5, 2008, the Airport Authority Board recommended that Dale W. Marks be appointed to serve on the Board because he is a pilot and would better understand the duties of the Board.

### **FISCAL IMPACT**

None. These are volunteer citizen boards.

### **OTHER OPTIONS**

Do not appoint the applicants named above and seek other applicants; however, it may be difficult for some boards to obtain a quorum.

[end memo]

Commissioner Rogers pointed out that Mr. Dale Marks marked on his application that he was not a registered voter. Mr. Gallaway said that Mr. Marks may have marked on his application that he is not a registered voter in the City but he may be registered in another state. Commissioner Van Sickle said that Mr. Weikert lives in Lake Ashton, is a snowbird, and that he has a very good background for the job. Mr. Otte said he could bring this item back to the Commission after researching further. Mayor Wheeler said he would like Mr. Otte to find out how regular Mr. Weikert's attendance would be if he only lives in Florida part of the year.

The Commission asked that this item be brought back at a later date when information can be obtained.

### **Agenda Item 18. Discussion of Financial Statements for April 30, 2008, Fiscal Year to Date**

Mr. Otte reported on Agenda Item 18. The full staff memo is incorporated into the minutes.

[begin memo]

### **RECOMMENDATION**

The unaudited financial statements for the City of Lake Wales for the Period Ending April 30, 2008 are presented to the City Commission for review. At the end of April, the City is 58.3% into the fiscal year. Fifteen of twenty-six payrolls (57.7%) have been expensed through April 30. Budget comparisons are based on the FY07'08 budget as amended by Ordinances 2008-02 and 2008-16.

### **SUMMARY**

The following chart gives a brief summary of revenue and expenditure performance as of April 30, 2008:

Fund	Revenues and Sources		Expenditures and Other uses	
	Percent of Budget	Comparison to Target	Percent of Budget	Comparison to Target
General Fund	71.9%	+13.6%	57.3%	-1.0%
Special Revenue Funds	79.2%	+20.9%	19.0%	-39.3%
Debt Service Fund	57.2%	-1.1%	90.9%	+32.6%
Capital Projects Fund	38.7%	-19.6%	56.3%	-2.0%
Airport Fund	3.3%	-55.0%	19.8%	-38.5%
Utility System Fund	20.9%	-37.4%	23.4%	-34.9%

General Fund revenues are currently 71.9% of budget due primarily to the fact that the General Fund received 89.8% of budgeted ad valorem tax revenues through April 30 with \$475,368 (12.5% of the total) received during April. Through the end of April, the City received 53.8% of franchise fees, 51.3% of utility taxes, 58.3% of communications services taxes, 59.1% of state-shared revenues, and 58.7% of sales tax revenues. General Fund expenditures were at 57.3% or 1.0% (\$114,366) below the 58.3% target level.

Overall revenues in the Special Revenue Funds were at 79.2% of budget, reflecting the receipt of \$9.5 million in CRA Bond proceeds. In addition, both city and county tax increment revenues have been fully recorded. The Library Fund received 91.6% of its budgeted revenues, and the Transportation Fund received 57.6% of gas tax revenues. Library Fund expenditures were at 52.4% of budget and Transportation Fund expenditures were at 10.0%. The CDBG grant fund recorded 95.9% of budgeted expenditures. There was minimal activity in the other Special Revenue Funds through the end of April.

Debt Service Fund expenditures are significantly higher than budget (+32.6%) as a result of the fact that \$852,975 in principal and interest payments for the Series 97 Bond and the SunTrust 2003 note were paid on October 1 and \$197,258 in interest for these two loans was paid on April 1. The October 1 payments were made from the bond sinking fund accounts that were funded during FY06'07 and represent 55.2% of the total expenditures budgeted for the Debt Service Fund in FY07'08. An additional \$30,291 principal payment for the Suntrust 99 CIP Bond was budgeted and funded in FY06'07 but was not actually paid until October 2007.

The Capital Projects Fund reflects receipt of 38.7% of budgeted revenue and 56.6% of budgeted expenditures. Most of the expense incurred in this fund through April 30 is related to construction of the Soccer/Multi-purpose field (\$239,931) and the expenditure of police and recreation impact fees.

Airport Fund revenues were at 3.3% of budget and expenditures were at 19.8% . Most of the revenues budgeted in this fund for FY07'08 are grant-related and fund major capital projects which have not been completed at the end of April.

The Utility Fund received 56.2% of budgeted revenues through April 30, this number includes impact fees and miscellaneous revenues as well as charges for services. Revenues from water charges were at 57.6% of the amended budget (-\$22,318), and revenues from sewer charges were at 58.6% (+\$6,402). Overall revenues and other financing sources in the Utilities Fund were at 20.9%. Loan proceeds related to the wastewater treatment plant expansion and southside force main projects are recorded as actual expense is incurred. Expenditures in the operating departments were at 52.9% or 5.4% (\$234,743) below target level. Total Utilities Fund expenditures and other uses were at 23.4%of budget.

The City's overall cash position at the end of April 2008 improved in comparison to the cash position at the end of April 2007 (+\$393,183). In order to make a valid comparison, however, adjustments must be made to both years as follows:

	4/30/07	4/30/08	Difference
Total Cash & Investments	7,692,634	8,085,817	+ 393,183
Due to Other Governments	(78,364)	(334,785)	
Insurance Proceeds & Other Airport Cash	(2,066,828)	(610,621)	
Deferred Revenues*	(511,375)	(507,229)	
Sale of Coop Fruit Prop (Net of Expenditures)	(1,091,488)	(1,091,488)	
Cash & Investments Net of Adjustments	3,944,579	5,541,694	+ 1,597,115

\*\*reflected in cash but restricted to a specific future expenditure (grant project, tree replacement fund, etc)

After excluding cash that has been collected on behalf of other governments, unexpended Airport insurance proceeds, deferred revenues and sale of the Cooperative Fruit Property, the City's overall cash position at the end of April 2008 reflects an increase of \$1,597,115 over the end of April 2007. In relation to the cash position at March 31, 2008, the April position shows an improvement of \$1,645,710. This improvement is due to the draw-down of CRA bond proceeds to reimburse expenditures made in anticipation of the bond issuance. The receipt during April of \$695,524 due from grant agencies for project costs paid up front by the City has also improved the cash position.

The City's accounts payable at 4/30 declined by \$299,373 from \$1,145,080 at 4/30/07 to \$845,707 at 4/30/08. The City's accounts receivable at 4/30 declined by \$190,5855 from \$1,586,924 at 4/30/07 to \$1,396,339 at 4/30/08.

**Items of Current Concern**

Sylvia Edwards, Finance Director, has updated the revenue trend analysis begun in February for revenues received through 4/30/08. In relation to the budget amendment proposed in Ordinance 2008-16, it appears that General Fund revenues will be approximately \$35,481 over budget at 9/30/08 (Chart 2). A similar analysis of expenditures through 4/30/08 indicates that spending on payroll and operating expense will be \$47,500 less than budgeted (Chart 3) after adjusting for projected increases in the cost of fuel (Chart 1).

If the current trend in water and sewer revenue collections continue, there will be an approximate shortfall of \$72,000 in Utility Fund service charges when compared to the amended budget (Chart 2). Although this is a shortfall of \$300,945 when compared to the originally adopted budget, at this time it is not anticipated that the shortfall will result in a reduced contribution to the General Fund for two reasons:

- 1) there is additional income resulting from the Oakley Settlement (\$358,488); and
- 2) it is currently projected that Utility Fund operating departments will spend nearly \$166,000 less than budgeted (Chart 3).

A summary of the information in Chart 2 and Chart 3 indicates that General Fund revenues will exceed expenditures by \$152,874 at the end of the fiscal year if a reduction of the Utility Fund Contribution to the General Fund is unnecessary. Please note that projected General Fund expenditures, while still anticipated to be under budget, are steadily increasing with each month's financials due in large part to fuel cost increases.

	at 2/29	at 3/31	at 4/30
General Fund Revenue Budget	11,528,664	11,528,664	11,511,001
Projected General Fund revenue excess (shortfall)	(118,588)	(168,876)	35,481
Projected shortfall in Utility contribution to Gen Fund	(175,034)	(228,844)	0
Projected General Fund revenues at 9/30/08	11,235,042	11,130,944	11,546,482
% of budgeted revenue	97.5%	96.6%	100.3%
General Fund Expenditure Budget	11,448,493	11,448,493	11,441,108
Projected General Fund expenditures under budget	(246,111)	(225,999)	(47,500)
Projected General Fund expenditures at 9/30/08	11,202,382	11,222,494	11,393,608
% of budgeted expenditures	97.9%	98.0%	99.6%
Projected Revenues over(under) Expenditures @ 9/30/08	<u>32,660</u>	<u>(91,550)</u>	<u>152,874</u>

(Note: Budget at 4/30 reflects  
 Amendment #2)

Although an estimated revenue surplus of \$152,874 is currently projected in the General Fund, it must be stressed that this estimate assumes that current revenue and expenditure trends continue and that the price of regular unleaded fuel does not exceed \$4.25 per gallon before October. The estimate is also dependent upon receipt of the entire budgeted contribution from the Utilities Fund. In FY04'05 and FY05'06 it was necessary to reduce the budgeted Utilities Fund contribution by \$286,850 and \$300,000 respectively in order to fund unexpected emergency repairs to pumps, generators and other aging utility system components.

If the revenue shortfall worsens or expenditures accelerate (either or both), there is the potential that the General Fund surplus will be drawn down to fund expenses. The audit of FYE 9/30/07 is nearing completion and indicates a beginning fund balance for FY07'08 of \$876,741 –as stated previously, nearly \$50,000 below the FY03'04 beginning balance of \$923,572.

As strongly recommended by the City's auditors, it has been our goal since 2001 to increase the General Fund balance to 15%-20% of the total operating budget for the following reasons:

- 1) to provide adequate financial resources for responding to emergencies
- 2) to cover the cost of four or five payrolls, down-payments on workers' comp, property and liability insurance, and other non-discretionary expenses that must be paid during the early part of the fiscal year before ad valorem revenues are received
- 3) to advance the costs for construction of grant-funded projects prior to reimbursement from grant sources

In terms of the amended budget, this would require a minimum General Fund balance of \$1.72 million. The current General Fund balance of \$876,741 is 7.7% of the amended operating budget and is sufficient to cover the first 2.9 payrolls of the next fiscal year.

As with the financial statements for the last two months, staff continues to recommend that both a hiring freeze and a discretionary spending freeze be maintained to ensure that expenditures do not exceed revenues and to provide sufficient cash for operating through the end of the fiscal year and during the first

quarter of FY08'09. The hiring and spending freeze may be waived by the City Manager when, in his opinion, critical services are impaired.

[end memo]

## **COMMUNICATIONS AND PETITION**

### **CITY COMMISSION TRACKING REPORT**

Adult Day Care Facility: Mr. Otte said that property title work has been requested and the survey work is scheduled to begin during the week of May 26, taking approximately 7 days to complete.

Police Dept. Generator: Mr. Otte said that representatives of Leedy inspected the old generator to try to determine the cause of the engine failure, and we are awaiting a follow-up report.

3-Way Stop at Polk and 4<sup>th</sup> St.: Mr. Otte said that installation has been completed.

Police Vehicles: Mr. Otte said that Commissioner Van Sickle requested data relating to mileage and repair records for current police vehicles, and asked that staff seek a price lower than the county bid. City Clerk Clara VanBlargan distributed to the Commission the report requested by Commissioner Van Sickle.

Budget Retreat: Mr. Otte said that Mayor Wheeler requested a budget retreat in June. Staff will provide information in June.

Cap on Sick Leave: Mr. Otte said that Commissioner Manry requested that staff review the cap on sick leave with our labor attorney. Information will be provided in June.

Boarded up Windows: Mr. Otte said that staff was preparing an ordinance with a timetable for allowing boarded up windows. Information will be provided in June.

Code Enforcement Tour: Mr. Otte said that Commissioner Manry had asked if another code enforcement tour could be arranged. Information will be provided in June.

### **PUBLIC COMMENT**

Sharon Becker, 403 E. Seminole Avenue, brought a recent Lake Wales News editorial to the Commission's attention regarding the Main Street open position and said this would give the City time to think about the importance of Tourism. Mr. Otte said he was taking a look into that and would have something to bring to the Commission by the end of the month.

John Caraway, resident, commented on antennae leases. Mr. Otte said he would be happy to talk to him about that during the week.

Jack Neil, 435 E. Central, requested that the curator position be extended if money can be found to do so.

Ruth Dampier, 1154 S. Lake Shore Blvd., commented that the sound level, especially at the back of the room, was terrible. She suggested the microphones were not close enough to those who spoke. She commented about the election lawsuit article in the Lake Wales News and said she could not hear what the Commission's vote was. City Attorney Chuck Galloway said the vote was to allow him to accept service by mail for the amended complaint. He explained what had taken place. She asked if they thought this would actually go to court because if it did there would be an outcry from citizens as Mr. Rogers won honestly and squarely.

John Caraway, resident, commented that he could turn in an application for the Airport Authority Board, though he did not know much about airplanes.

**COMMISSION COMMENT**

Mayor Wheeler asked for Commission comments and there were none. Commissioner Manry commented that when she has questions, she normally clears them up by talking with Mr. Otte during the week. Unless it is an issue the public needs to hear, she does not bring it up in Commission meetings. She is assuming that, as there were no Commission comments, other Commissioners have done likewise.

There being no further business, the meeting was adjourned.

  
\_\_\_\_\_  
Mayor/Commissioner

ATTEST:

  
\_\_\_\_\_  
City Clerk