

The regular meeting of the Lake Wales City Commission was held on November 5, 2008 at 6:00 p.m. in the Commission Chambers at the Municipal Administration Building. Mayor Lee A. Wheeler, III, called the meeting to order.

INVOCATION

The invocation was given by Fire Chief Jerry Brown.

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 H. 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 October 21, 2008 regular meeting. The motion was seconded by Commissioner Van Sickle.

ROLL CALL:

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

The motion carried 5-0.

Agenda Item 5. Proclamation: Polk County Family Week, November 16-22, 2008

Mayor Wheeler read a proclamation proclaiming November 16-22, 2008 as "Polk County Family Week." Lori Waters, chairman of the Polk County Family Week Organization, accepted the proclamation.

VFW to present an Officer of the Year Award to Officer Bruce Yoxall & a Fighter of the Year Award to Firefighter/EMT Terrance Hammonds

Commander Norm Ford, District Manager of VFW District 4, Post 2420, presented an Officer of the Year Award to Officer Bruce Yoxall and a Firefighter of the Year Award to Fire Chief Jerry Brown on behalf of Firefighter/EMT Terrance Hammonds, who was unable to attend due to illness.

AWARDS, CERTIFICATES & COMMENDATIONS:

Award: Jahna Foundation for supporting the Police Summer Camp

Award: Florida's Natural for supporting the Police Summer Camp

Certificates of Completion: 14 Graduates of Citizen Police Academy

Commendation: Officer Michael Smith

Police Chief Herbert Gillis presented an award to the Jahna Foundation and to Florida's Natural for supporting the Police Summer Camp. Representatives of the Jahna Foundation and Florida's Natural accepted the awards.

Police Chief Herbert Gillis presented Certificates of Completion to the fourteen graduates of the Citizen Police Academy.

Mayor Wheeler said that the Commendation for Officer Michael Smith would be presented at another City Commission meeting because Officer Michael Smith was unable to attend this meeting because he had to work.

Mayor Wheeler asked that Agenda Item 13 be moved up on the agenda.

AGENDA ITEM 13. Relocation of Park Monument

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

[begin agenda memo, prepared by Anthony G. Otte, City Manager]

RECOMMENDATION

City staff requests further discussion and research concerning this item.

BACKGROUND

At the October 21 City Commission meeting Commissioner Rogers asked that this item be included on the next agenda. The VFW post has asked that the war veterans' monument, which is located in Lake Wailes Park, be moved to a more prominent location. The City Hall area has been suggested as one such location, either in the circle in front of the building, or in the grass area. The monument's present location is somewhat secluded, and there has been some damage to it.

City staff believes that moving the monument to the area around City Hall would be a worthwhile community project... but like so many worthwhile projects, the problem is funding. The city budget does not have funds for this project. The cost of the project is unknown at the time of the preparation of the packet, but city staff expects to have an estimated cost at the meeting. In addition to the moving of the monument, there would be costs for the design and construction of a concrete pad for the monument to set on.

OPTIONS

Leave the monument at its present location.

FISCAL IMPACT

Unknown at this time. The VFW has offered to help and perhaps the funding for this project could be raised through their efforts.

[end agenda memo]

Commissioner Rogers said that he spoke with leaders of the VFW, who said that VFW would provide the funding for this project and with the permission from the Commission, they would also have the monument moved.

Commander Norm Ford, District Manager of VFW District 4, Post 2420, said that the memorial for the veterans at the park has been neglected to a point that it will soon be beyond repair. He said the VFW has been addressing this concern for the past five years and has not received any participation. Commander Ford named two locations where the VFW would like the monument to be moved to at City Hall: in the grass area at the northwest corner or in the circle in front of the building. He said that the VFW will pay for the repair and for the moving of the monument, but the upkeep would be the responsibility of the City. Commander Ford said that he would like to know the history of the monument and where it came from. He said that in the future, if it's possible, the VFW would like to add the names of more recent or prominent veterans to the monument such as J. M. Tillman. He said this would rectify a decaying situation with this monument.

Commissioner Manry commented that this is a fabulous project. She asked if this had ever been addressed to the City Commission. Commander Ford said no. Commissioner Manry said that the history of the monument and where it came from would make a great story. She said that if the Lake Wales News carried an article asking about it they would receive lots of fascinating responses. Mayor Wheeler and Commissioner Van Sickle said that is an excellent idea. Commissioner Van Sickle showed PowerPoint pictures of the veteran's monument located at Lake Ashton that was recently put in by the Lake Ashton Veteran's Club with money they raised for the project. He introduced Frank Ota, Commander of the Lake Ashton Veteran's Club, who told about how they came up with a design for the monument and how they raised the money to build it. Mr. Ford said that the monument serves as a reminder of how our veteran's made the supreme sacrifice for all of us, which was the reason for building it.

Mr. Otte suggested moving the monument to the northwest corner of City Hall because it would be easier to accommodate there. He suggested that instead of delaying this item and bringing it back to the Commission for design approval, the Commission should authorize someone or Commissioner Van Sickle to approve a plan so the project could move forward.

Commissioner Manry made a motion to authorize Commissioner Van Sickle to approve a plan and to coordinate the project with the VFW. 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 6. Ordinance 2008-38, Annexation: Phillips Property – 1st Reading

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

[begin agenda memo, prepared by Margaret Swanson, Planning & Development Director]

RECOMMENDATION

Staff recommends approval on first reading of Ordinance 2008-38 providing for the annexation of approximately 20 acres east of U. S. Highway 27 North.

A recommendation from the Planning and Zoning Board is not required for an annexation ordinance.

BACKGROUND

D.M. Phillips and Lillian B. Phillips have requested annexation of approximately 20 acres of property.

The property's location is shown on "Attachment A" to the ordinance. It is about a quarter mile east of U.S. Highway 27 North. Towerview Boulevard is to the south and Hickory Hammock Rd. is to the north. It is contiguous to the City along its southern boundary.

Surrounding properties:

North: vacant/agricultural and Hickory Hammock Rd. (in Polk County)

South: vacant parcel (in City of Lake Wales)

East: vacant, former RR right-of-way, and Scenic Highway (in Polk County)

West: parcels along US 27 (Lee's Furniture, proposed Angus Self-storage) (in City of Lake Wales)

A land use designation has not been requested at this time. After consultation with staff, the applicant has requested annexation only. The applicant is aware that a land use designation must be made within a year of annexation per the zoning regulations.

This property is directly north of the Coldwell property annexed in July 2008. This property and the Griffith property also being considered for annexation on this date will be combined with the Coldwell property to create access to Hickory Hammock Road.

OTHER OPTIONS

Decline to annex the property.

FISCAL IMPACT

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

[end agenda memo]

Ms. Delmar read Ordinance 2008-38 by title only.

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 20 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.

Commissioner Manry made a motion to approve Ordinance 2008-38 after first reading. The motion was seconded by Commissioner Howell.

ROLL CALL:

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

The motion carried 5-0.

AGENDA ITEM 7. Ordinance 2008-39, Annexation: Griffith Property – 1st Reading

Mr. Otte reported on Agenda Item 7. The full staff memo is incorporated into the minutes.

[begin agenda memo, prepared by Margaret Swanson, Planning & Development Director]

RECOMMENDATION

Staff recommends approval on first reading of Ordinance 2008-39 providing for the annexation of approximately 10 acres south of Hickory Hammock Road.

A recommendation from the Planning and Zoning Board is not required for an annexation ordinance.

BACKGROUND

Joseph P. Griffith, Jr., owner has requested annexation of approximately 9.61 acres of property.

The property's location is shown on "Attachment A" to the ordinance. It is about a quarter mile east of U. S. Highway 27 North and Hickory Hammock Rd. is to the north. It is contiguous to the City along its southern boundary upon annexation of the Phillips property that is being considered for annexation concurrently.

Surrounding properties:

North: vacant/agricultural and Hickory Hammock Rd. (in Polk County)

South: vacant parcel (in City of Lake Wales)

East: vacant, former RR right-of-way, and Scenic Highway (in Polk County)

West: parcels along US 27 (Lee's Furniture, proposed Angus Self-storage) (in City of Lake Wales)

A land use designation has not been requested at this time. After consultation with staff, the applicant has requested annexation only. The applicant is aware that a land use designation must be made within a year of annexation per the zoning regulations.

This property is north of the Coldwell property annexed in July 2008. This property and the Phillips property mentioned above will be combined with the Coldwell property to create access to Hickory Hammock Road.

OTHER OPTIONS

Decline to annex the property.

FISCAL IMPACT

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

[end agenda memo]

Ms. Delmar read Ordinance 2008-39 by title only.

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 10 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.

Commissioner Manry made a motion to approve Ordinance 2008-39 after first reading. The motion was seconded by Commissioner Howell.

ROLL CALL:

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

The motion carried 5-0.

AGENDA ITEM 8. Ordinance 2008-40, Final FY-07'08 Budget Amendment #4 - 1st Reading

Mr. Otte reported on Agenda Item 8. The full staff memo is incorporated into the minutes.

[begin agenda memo, prepared by Judith H. Delmar, Asst. City Manager]

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2008-40 after first reading.

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 Ordinances 2008-02, 2008-16 and 2008-36. We are presenting for first reading a fourth and final 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 which is housekeeping in nature.

This budget amendment is based on unaudited preliminary financial reports for the year ending on 09/30/08 and is necessitated by expenditures in several departments that exceeded budget. Wherever surplus allocations existed at 09/30, they have been reallocated to departments where additional appropriations were needed; however, it has also been necessary to appropriate unbudgeted revenues and General Fund fund balance to cover excess expenditures. 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	96,145
Special Revenue Funds	63,415
Debt Service Fund	18,815
Capital Projects Fund	(8,764)
Airport Fund	(1,269,041)
Utility System Fund	0

Total Increase(Reduction) of Revenues & Balances Fwd	(1,099,430)
Appropriated Expenditures & Reserves	
General Fund	113,886
Special Revenue Funds	81,242
Debt Service Fund	546,161
Capital Projects Fund	130,701
Airport Fund	(1,981,868)
Utility System Fund	0
Reserves	10,448
Total Increase (Reduction) of Appropriated Expenditures & Reserves	(1,099,430)

The proposed budget amendment reduces the City's total budgeted expenditures by \$1,109,878 and increases reserves at 9/30/08 by \$10,448 for a net reduction in appropriated expenditures and reserves of \$1,099,430 (from \$74,074,684 to \$72,975,254).

While this budget amendment results in increased budget appropriations for the General Fund (+\$113,886), the CDBG Fund (+\$81,242), the Debt Service Fund (+\$546,161), and the Capital Projects Fund (+\$130,701), the overall reduction in the total budget is due to a reduction of \$1,981,868 in the Airport Fund. Most of the reduction in the Airport Fund is related to construction projects that were not complete at 9/30/08, and the FY08'09 budget will be amended to reflect the carry-forward of these projects.

Both the operating and capital budgets in the Airport Fund are amended to reflect actual revenues and expenditures during FY07'08. This detailed amendment is necessary in order to calculate the amount of subsidy required from the General Fund to cover the shortfall in airport revenues that fund operating costs and local matches for grant-funded projects. An increase in the General Fund transfer in the amount of \$23,491 is necessary to cover \$3,168 in operating costs and \$20,323 in local match requirement for the airport parking lot and runway lighting projects.

In the General Fund, revenues exceeded budget by \$96,145 and these excess revenues have been appropriated to fund excess expenditures. Expenditures exceeded budget by \$88,828 before increasing the subsidy to the Airport Fund. After accounting for the additional Airport subsidy (\$23,491) and a slight allowance for additional adjustments during the audit process (\$1,567), General Fund expenditures exceed the adopted budget by \$113, 886, necessitating a draw-down of fund balance in the amount of \$1,741.

Contributing to the General Fund overage was the increasing cost of fuel. On a city-wide basis, \$390,247 was spent on fuel in FY07'08; this was \$99,072 more than was budgeted. In the General Fund, expenditures for fuel exceeded budget by \$65,575.

Expenditures adjusted by Budget Amendment #4 are as follows:

Various General Fund Departments – adjusting for fuel expense over budget	65,575
Police Dept - adjusting payroll for pay-out of leave balances to terminating employees, unbudgeted salary adjustments (earned education incentives, promotions, etc)	69,200
Police Dept - adjusting for increased expense for vehicles M&R	19,099

Waste Disposal - increasing expense for collection services	61,800
Facilities Maintenance - adjusting for excess overtime (+7,140) and over-budgeted labor allocations to other departments (+16,860)	24,000
Information Services - adjusting for over-budgeted labor allocations to other departments	12,300
Building Dept - adjusting for unbudgeted payroll increases (earned education/certification incentives, promotions, etc)	3,100
Parks Division - adjusting for increased expense for vehicles M&Rb	11,762
General Fund Interfund Transfers – increasing transfer to Airport Fund to resolve negative balance at 9/30/08 (+3,168 for operating; +20,323 for local match for grants)	23,491
City Attorney - adjusting non-retainer services for increased fees relating to litigation (+6,094) and adding cost of lodging/meals Municipal Atty's Conference (+421)	6,515
Municipal Admin Building – adjusting for cost of security system (+5,106 net of other savings in department)	3,385
Various General Fund Departments – reducing surplus appropriations (reappropriating to departments with excess expenditures)	(186,341)
CDBG - adjusting Wiltshire grant admin expense (-17,836), engineering (+16,930), and drainage project construction (+44,881)	43,975
CDBG - carrying forward budget for Disaster Recovery grant expense from FY06'07	75,370
CDBG - reducing budget for Lift Station 16 project	(38,103)
Debt Service - adjusting Suntrust 99 CIP principal payment to actual	30,292
Debt Service - adding budget appropriation for CRA principal payment due 10/1/08 but paid before 9/30/09 (funds set aside in FY07'08 for payment)	403,503
Debt Service - adjusting CRA interest payment to actual	43,312
Debt Service - adding budget appropriation for FBO Lease repayment credit	18,000
Debt Service - adding budget appropriation for CRA Bond issuance costs	51,054
Capital Projects - carrying forward budget for Soccer Field grant expense from FY06'07	329,468
Capital Projects - deleting appropriation for Fire Substation	(74,971)
Capital Projects - adjusting various line items to actual	(70,296)
Capital Projects - correcting error in Budget Amendment #3 that duplicated previous budget amendment adding appropriation for acquisition of land at Austin Center	(53,500)
Airport - amending all operating budget appropriations to actual expenditures	14,974
Airport - amending all capital budget appropriations to actual expense	(1,996,842)

Total Expenditure Amendment	(1,109,878)
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OTHER OPTIONS

None; this is a required housekeeping amendment.

FISCAL IMPACT

See Exhibit A and Exhibit B attached to Ordinance 2008-40.

[end agenda memo]

Ms. Delmar read Ordinance 2008-40 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING ORDINANCE 2007-40 AS AMENDED BY ORDINANCES 2008-02, 2008-16 and 2008-36 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.

Mr. Otte said just before the meeting City staff discovered that the fire and police pension contribution was over funded, which would cause the drawdown amount of fund balance to change. Ms. Delmar said that the over funding of last year's pension contribution would be applied to the pension contribution this year. She said that the contribution is actuarially determined. The City is given an amount that it has to contribute each year. So, when doing the budget the cost is allocated on a per employee basis and a rate is applied against each employee's salary to generate that amount of contribution. This amount changes as salaries increase during the year or if an employee leaves the employment of the City. As it turned out, we had an excess of contribution in both the police and fire pension fund and possibly in the general employee pension fund as well, which is still being studied.

Commissioner Manry asked when the last budget amendment had to be approved. Ms. Delmar said that it had to be approved within 60 days after the closing of the fiscal year, which would be by the end of November. Mr. Otte said that it would be his preference to postpone this to another meeting, but he does not want to call a special meeting in the last week of November, which is Thanksgiving week. He said staff recommends that the Commission approve the budget amendment on first reading and then make the adjustments on second reading.

Commissioner Manry made a motion to approve Ordinance 2008-40 after first reading and to make the adjustments on second reading. The motion was seconded by Commissioner Van Sickle.

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 2008-41, Amended Depot Commission Ordinance – 1st Reading

Mr. Otte reported on Agenda Item 9. The full staff memo is incorporated into the minutes.

[begin agenda memo, prepared by Clara VanBlargan, City Clerk]

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2008-41 after first reading.

BACKGROUND

The City Commission adopted Ordinance 2008-37 on October 21, 2008 that eliminated the position of Depot Executive Director and the duties thereof. This ordinance resolved a conflict that was created with the new contract that the Commission approved on September 19, 2008 between the City and Historic Lake Wales Society because the contract eliminated the need for city employees to operate the museum and serve as museum staff. Before adoption of Ordinance 2008-37, the City's existing ordinance established the position of depot executive director, appointed by the city manager and working under the direction of the city manager. As a ministerial duty, that existing ordinance needed to be repealed.

At the adoption of Ordinance 2008-37 on October 21, 2008, Tom Baynes of the Historic Lake Wales Society suggested that Ordinance 2008-37 be amended to allow the director or the president of the Historic Lake Wales Society serve as an ex officio member of the Depot Advisory Commission. Mr. Baynes felt that the amendment would allow the Depot Advisory Commission the benefit of having information available right there so it could be presented to the Historic Lake Wales Society Board of Directors in hopes of resolving a lot of things without having to come back to the City Commission. Following the discussion, it was the consensus of the Commission to bring back Ordinance 2008-37 to allow the chairman of the Historic Lake Wales Society to serve as a non-voting ex officio member of the Depot Advisory Commission.

OPTIONS

Do not approve Ordinance 2008-41 after first reading.

FISCAL IMPACT

None.

[end agenda memo]

Ms. Delmar read Ordinance 2008-41 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, LAKE WALES CODE OF ORDINANCES BY AMENDING ORDINANCE 2008-37 TO ALLOW THE CHAIRMAN OF THE HISTORIC LAKE WALES SOCIETY TO BE A NON-VOTING EX OFFICIO MEMBER OF THE DEPOT ADVISORY COMMISSION; REPEALING ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE AND PROVIDING FOR AN EFFECTIVE DATE.

Commissioner Rogers made a motion to decline Ordinance 2008-41 after first reading. The motion was seconded by Commissioner Van Sickle.

ROLL CALL:

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

The motion failed 3-2.

Mayor Wheeler said that the Historic Lake Wales Society has a president and not a chairman. He asked that the ordinance be changed to reflect that before second reading.

Commissioner Manry made a motion to approve Ordinance 2008-41 after first reading, and to approve the change to the ordinance as requested by the Mayor before second reading. The motion was seconded by Commissioner Howell.

ROLL CALL:

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

The motion carried 3-2.

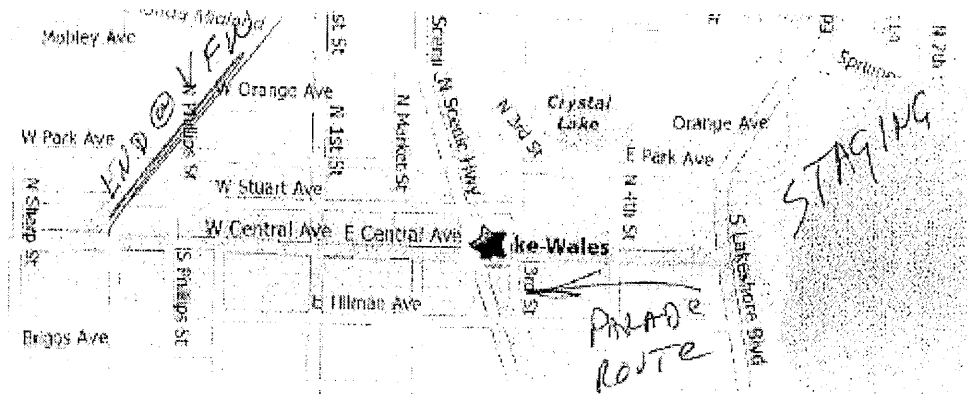
AGENDA ITEM 10. Veteran's Day Parade & Celebration – Temporary Street Closings

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

[begin agenda memo, prepared by Katie Kinloch, Administrative Assistant to City Manager]

RECOMMENDATION

It is recommended that the City Commission approve the street closings associated with the annual Veteran's Day Parade on November 15 from 10:00 a.m. to 1:00 p.m. The parade will begin at 11:00 a.m. with the route starting at Lake Wales Park on south Lake Shore Blvd. and will travel to Central Avenue to the Lake Wales VFW located at the corner of west Central Avenue and Dr. Martin Luther King, Jr. Blvd. where the parade will dismantle. Because the parade will take less than 15 minutes to cross SR17, a State Road Closing Permit is not required for this event.



BACKGROUND

Carl Kampman, representing the Lake Wales VFW and the Lake Wales Kiwanis Club, submitted an Application for Special Event Permit for the Annual Veteran's Day Parade, and is requesting that the City Commission approve the street closures associated with this very special event. The sponsors are responsible for any necessary sanitary facilities, site preparation, and site cleanup. The Lake Wales Police Department will be responsible for traffic control.

OTHER OPTIONS

Not to approve the street closings.

FISCAL IMPACT

There is \$1,760 in in-kind services budgeted in the FY08'09 budget for this event for Police Department services.

[end agenda memo]

Commissioner Howell made a motion to approve the street closings associated with the annual Veteran's Day Parade on November 15 from 10:00 a.m. to 1:00 p.m. 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. Eward Bowlin v. City of Lake Wales

Mr. Otte reported on Agenda Item 11. The full staff memo is incorporated into the minutes.

[begin agenda memo, prepared by Albert C. Galloway, Jr., City Attorney]

RECOMMENDATION

That the City Commission amend the grant provided to the Historic Lake Wales Society, Inc. (the "Society"), to identify the \$3,000.00 previously allocated to Security Systems to the Staffing line, thereby increasing that line from \$30,000.00 to \$33,000.00.

BACKGROUND

Edward Bowlin filed the referenced legal action against the City of Lake Wales complaining that the \$3,000.00 reallocation would be a direct payment of public funds to the employee to be hired by the Society. Mr. Bowlin's action requests the Court to enjoin such a payment. At a hearing held on October 23, 2008, the Court denied Mr. Bowlin's Motion for a Temporary Injunction.

On September 25, 2008, the Contract with the Society was amended and the Agenda Memorandum reflected that the \$3,000.00 previously allocated for Security Systems would be allocated to obtain continued insurance coverage under the provisions of COBRA for the individual who was a candidate for the position. Mr. Bowlin alleges such a payment is a direct payment which violates the Florida Constitution and portions of Chapter 166 of the Florida Statutes. Moving the \$3,000.00 to the Staffing line of the grant should serve to moot the question because the Society has the authority to bargain with a potential employee regarding insurance coverage.

After this requested action is taken by the City Commission, the law must be applied to the facts as they then exist. If this action is approved, I will suggest to Mr. Bowlin that he dismiss his action since the facts are no longer as alleged.

OTHER OPTIONS

None.

FISCAL IMPACT

None.

[end agenda memo]

Mr. Galloway explained that according to the language that was approved when the Commission amended its recently adopted grant with the Historic Lake Wales Society, the \$3,000 previously allocated for security systems would be applied to a Cobra benefit for the person who it was contemplated would be hired. That was challenged by Mr. Bowlin as a direct payment. If the Commission changes this to where there would be just a portion of it allocated for a staff person then the entity could negotiate with the staff person in whatever fashion it chooses. The person who was going to take the job did not take the job, so the Historic Lake Wales Society hired an individual who recently moved to Lake Wales from California. Mr. Galloway recommended that the Commission adopt this change so that the question would become moot.

Commissioner Van Sickle said it was his understanding when the Commission voted on this that we were allowing Cobra pay for a current City employee that could be without a job to transition her health insurance for a period of time. He said the City needed to look at that because this individual did not go to the Historic Lake Wales Society. The City does not need to give the Society an extra \$3,000 for a Cobra payment if there is no one there that would be using it. The City gave the Society \$30,000 for a part-time person and an extra \$3,000 for cobra pay. Commissioner Van Sickle said the Commission could amend the grant if it chooses in a form of saying that the \$3,000 would not be part of the grant. Then, the money could go back into the General Fund.

Commissioner Manry asked if the grant was for \$33,000. Mr. Galloway said that the originally approved grant was for \$30,000 for a full-time employee. He said he does not think that it was legally wrong when the Commission amended the grant to take the allocation for the security out and apply it to a Cobra benefit. But, if the Commission removes it from the question, then it moots the question. So, if the Commission decides to take the \$3,000 out and put it back into the General Fund rather than leaving it as part of the grant then that is certainly its prerogative as well. Mayor Wheeler asked if the contract would need to be re-negotiated. Mr. Galloway said no because it is just a grant.

Ms. Delmar said that the contract was negotiated at \$54,000, which was itemized for utilities, security, and personnel cost. Security was allocated greater than what security actually cost. The security cost \$800.00 and not \$3,000. So, that money was supposed to be moved into the staffing line to pay the Cobra benefit.

Mr. Galloway said that it would have been a staffing cost, which was why he suggested in his memo that the money be moved into the staffing line.

Commissioner Rogers asked if this suit would go away if the Commission deleted the \$3,000 from the Depot Museum budget. Mr. Galloway said that it would not go away, but the facts would change, which is appropriate for a legislative body to do. Commissioner Rogers asked if a motion to dismiss was made would it take care of the problem. Mr. Galloway said that he would move for summary judgment, but he would have to analyze the best way to approach that. The court has already denied a motion for injunction relief. Mr. Galloway said he does not think that the court could grant an injunction at this stage. But, if the Commission takes away this factual scenario then the reason the complaint was filed would go away.

Commissioner Howell asked if by giving money to an employee for insurance would it be the mirror of what is being done at the B Street Center. Sandra Davis, Human Resources Director, said the City is not providing insurance coverage to the employee at the B Street Center. Mr. Galloway said he was not saying that the City would be providing the insurance. Ms. Davis said that the \$3,000 is unnecessary at this point because the person that it was intended for no longer works for the City and did not take Cobra. The Commission could pull the \$3,000 out of the grant because it doesn't need to be there.

Commissioner Rogers made a motion to get the \$3,000 back and to get the lawsuit settled. The motion was seconded by Commissioner Van Sickle.

ROLL CALL:

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

The motion carried 5-0.

Ed Bowlin, Circle Drive and complaintiff in the lawsuit, said now that the Commission corrected this the suit can be dismissed under a stipulation of dismissal as long as the City would agree to pay the actual court cost on the stipulated agreement, which has to be signed by both parties. He said that he would type up the paper and could have it filed tomorrow or the next day. Mr. Bowlin said Mr. Galloway was incorrect when saying that this is moot because it has been corrected. If this was an action brought to law then that would be correct but it is not. He said that we could continue fighting this matter over the cost if the City would like. Mr. Bowlin said that it only cost him \$4.00 to drive over to Bartow and every time the City attorney has to go it cost about \$300 to \$400. The City made an honest mistake, which has been corrected. So, the City needs to pay for the court cost so we can dismiss this and go about our way. He said that he has paid a total cost of \$360: \$300 for the filing fee; \$10 for the summons; and \$50 for serving the Mayor.

Mr. Galloway said that he does not think that it is appropriate for the City to pay \$360 to make the case go away because he does not believe factually that Mr. Bowlin has a case that he can win on. It does cost money to send counsel to the court but if the City pays the court cost it would be setting a precedent for anyone else to come in and sue the City, and the City would have to pay the court cost. Mr. Galloway said there is no provision in the law for an award of attorney fees in this situation. It is up to the Commission to decide, but he would advise that it is not a good precedent to set in a litigation matter.

Mr. Bowlin said the difference in this case is that the City was wrong. The City unintentionally violated the Constitution. It was the wording of the grant. He said that just because he was denied a Temporary Injunction doesn't mean the case is invalid. To the contrary, Judge Curry very much wanted to hear this

case, and he made it very clear during the hearing that not getting a Temporary Injunction had no effect on the case at all. Mr. Bowlin said the reason the Temporary Injunction wasn't granted was because he had another avenue to sue to get the \$3,000 back. In other words, a Temporary Injunction is granted if there are no other adequate remedies of law. Mr. Bowlin said the only issue is his cost, which he will fight for because he is entitled to it. The City was in error and it needs to take responsibility for it so we can go on about our business.

Commissioner Howell said she does not want to set a precedent that would allow anyone to sue the City because the City would then have to pay that court cost. If this is the thing that the Commission is supposed to do then she is all for it, but she doesn't want just anyone to sue the City because it made an error mistakenly. Mr. Galloway said that in his personal opinion and analysis, he does not believe the Commission made an error even without the change that has been made tonight.

Commissioner Van Sickle said that he would love to get this case off the books, but he does agree with Commissioner Howell. This could come back and bite us. He said that unfortunately he does think that the City should pay a few extra dollars to let the process go through the court. That way it would be resolved. Commissioner Van Sickle said he understands why Mr. Bowlin feels the City owes him the money, but the Commission has to stick by the attorney's advice and continue going to court until this thing gets resolved. Mr. Bowlin said that is fine, but a stipulation of dismissal would be the proper process at this point. So, anything else we do to fight for the money would add to the cost.

AGENDA ITEM 12. Ratify Changes to Lake Wales/Polk County Utilities Settlement Agreement

Mr. Otte reported on Agenda Item 12. The full staff memo is incorporated into the minutes.

[begin agenda memo, prepared by Clara VanBlargan, City Clerk]

RECOMMENDATION

It is recommended that the City Commission ratify changes to the Lake Wales/Polk County Settlement Agreement to correct scrivener's errors as requested by the County Attorney's Office.

BACKGROUND

The City Commission approved the Settlement Agreement between the City of Lake Wales and Polk County on August 5, 2008. Then, the County approved the Settlement Agreement with Lake Wales, but prior to doing so, references to November 31 found in the Agreement were changed to December 1. The County Attorney's Office requested that the City Commission ratify the Agreement with the changes. The changes correct a scrivener's error concerning the November 31 errors.

OPTIONS

None.

FISCAL IMPACT

None.

[end agenda memo]

Commissioner Howell made a motion to ratify changes to the Lake Wales/Polk County Settlement Agreement to correct scrivener's errors as requested by the County Attorney's Office. 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 14. Discussion of Financial Statements for September 30, 2008, Fiscal Year to Date

Mr. Otte asked Ms. Delmar if the comments that were made on the budget amendment applied to the financial statements as well. Ms. Delmar said yes. Mr. Otte asked Ms. Delmar if she would like to bring this item back to the Commission at its next meeting. Ms. Delmar said yes. She said that we have to bear in mind that during this period up until the time when the auditors come in we are under the gun to get the final budget amendment passed within 60 days after the closing of the fiscal year. The financial statements can be brought back with the stipulation that they are only preliminary financials.

COMMUNICATIONS & PETITIONS

CITY COMMISSION TRACKING REPORT

Adult Day Care Facility: Mr. Otte reported that there are continued meetings and interest from the county. The new Polk County Health Department should be completed during the third quarter of 2009. There is some funding for the construction of the adult day care but not for the operation. So, this item will continue until the county can come up with some money for that.

Interconnect with Winter Haven at Lake Ashton: Mr. Otte reported that the City of Lake Wales and the City of Winter Haven share the same underground utilities contractor. So, there are no questions concerning the contractor or the cost. The contractor had to slightly redraw the plans, which should be ready to send over to Winter Haven sometime this week.

Commissioner Rogers asked for an update on the RFP for the new police cars. Mr. Otte said the RFP has been advertised and that the process could take about 30 to 45 days.

PUBLIC COMMENTS

Jean Scott, 306 Townsend Avenue, said a citizen asked her if the City could do something about the Lake Wales cemetery. There are no directional signs showing where the cemetery is located except for a small sign on two poles that sits behind a bush at the north entrance that says "Lake Wales Cemetery." On the east side of the cemetery the weeds are very high between it and Hwy. 27 and at the south entrance there is nothing but very high weeds. The cemetery is just unsightly. She said the workers at the cemetery are doing the best that they can with what they have and in the time that they have. This is something that really needs to be looked into. Ms. Scott said that she took pictures, but forgot to bring them. Mayor Wheeler asked if the areas at the Lake Wales Cemetery that Ms. Scott was describing were state roadway or City property. Mr. Otte said that staff will check it out because there is quite a bit of frontage there that is state right-of-way.

Ms. Scott said that someone asked her if the City could put in a sidewalk from Dr. Martin Luther King, Jr. Blvd. to Hwy. 27 because a lot of people walk that path, which is unsafe to do so. Kathy Bangle, Asst. Planner, said that a contractor came in to the Building Department this week and pulled 10 permits to build sidewalks in the City, and one of those permits was to build that sidewalk.

Ms. Scott said that the City has been discussing implementing an Adopt-a-Street program. She said the first place to do that should be at McDonalds because a lot of people throw out their trash there.

Ruth Dampier, 1154 S. Lakeshore Blvd., asked why the City would let the Bowlin suit go to court over \$360. She said that she cannot believe the City would be so imprudent with the citizen's money. Mr. Galloway explained that the Commission is not willing to pay for dismissal at this particular junction because it sets up a precedent for anyone else to come in and say the City should pay no matter how much money it is. Ms. Dampier said that if this was a perfect world we would not have to worry about that. This is still making the City responsible for a court hearing that the citizens would have to pay for. Mayor Wheeler said that the citizens would have to pay either way. Ms. Dampier said there is no way the City can go to court with only \$360. She said Mr. Galloway makes more money than that just by taking the City to court. Mr. Otte said that the City Attorney has advised that the action that the Commission just took removed the basis for the suit. Mr. Galloway said the concern Ms. Dampier has is that it would cost more money for him to go to court than it would to just pay the \$360.

Commissioner Manry asked Ms. Dampier if she would still have a problem with the Commission just saying that it was not wrong in this case but will pay the money anyway. She said that the City is not wrong and will not set a precedent. Ms. Dampier said that pride is getting the best of the Commission, so she will not over rule. Commissioner Manry said that is not pride, it is what the Commission has been advised to do, and only the court can decide. Mayor Wheeler said that the City does not pay people not to sue. Ms. Dampier said she agrees, but she does think that Mr. Bowlin has a strong case, and that she would hate for the City to spend the money to prove otherwise. She asked that the Commission give a little bit more thought to this.

COMMISSION COMMENT

Mayor Wheeler reminded everyone to remember the troops overseas, especially during the Thanksgiving and Christmas Holidays. He asked everyone to adopt a soldier from the list that is available on the City's website and to send a card, letter, etc. Mayor Wheeler also asked that everyone help the Veteran's Club at Lake Ashton with the expense of shipping packages to the troops.


Mayor Wheeler reminded everyone of the CRA meeting that would be held immediately following the meeting.

There being no further business the meeting was adjourned.



Mayor/Commissioner

ATTEST:



City Clerk