

The regular meeting of the Lake Wales City Commission was held on December 16, 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.

Mayor Wheeler left the meeting at approximately 6:03 p.m.

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 December 2, 2008 regular meeting. 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.

At approximately 6:03 p.m. Mayor Wheeler announced that he was turning the gavel over to Vice-Mayor Van Sickle because he had his company Christmas party to attend. He wished everyone a Merry Christmas and a Happy New Year.

Vice-Mayor Van Sickle asked that Consent Agenda Item 16 be pulled from the consent agenda and discussed first.

AGENDA ITEM 16. Purchase of Replacement Canine and Payment of Unanticipated Veterinary Expenses

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

[Begin agenda memo, prepared by Patrick Quinn, Operations Captain]

RECOMMENDATION

It is recommended the City Commission approve the purchase of a replacement canine for a price not to exceed \$11,500.00 and approve the payment of veterinary expenses in the amount of \$4,419.80 associated with the veterinary care of Canine Zeke prior to his passing.

BACKGROUND

The Lake Wales Police Department currently utilizes Police Canine Work Dogs to perform many valuable functions in the performance of our daily duties. The use of the canines has become an indispensable asset for the agency. The Canine unit is utilized to track not only fleeing criminals but is utilized to find missing children and adults. The dogs clear buildings of threats to officers in a very short period of time, they aid us in our fight against illegal drugs and are very useful to create a bridge between citizens and police by performing canine demonstrations and other public interest events.

On November 20, 2008, Canine Zeke, one of our canines, became ill and needed emergency care. Unfortunately Canine Zeke succumbed to his illness and passed away on November 28, 2008. Zeke had at that time given our agency over six years of valuable service and was one of two canines in use by the agency. The passing of Zeke has caused a lapse in coverage for canines, which needs to be filled as soon as possible. The medical expenses for Zeke also exceeded the amount budgeted for canine medical expenses in the fiscal year 08/09. The expenditure of \$4,419.80 exceeds the amount budgeted.

In preparing to find a replacement canine capable of being certified immediately upon purchase, members of the Police Department have been contacting police canine vendors throughout the Southeastern United States. The general price for a replacement canine capable of certifying immediately upon purchase is \$11,500.00. The Police Department respectfully requests the City Commission appropriate \$4,419.80 to cover the cost of the medical expenses related to Canine Zeke and an amount not to exceed \$11,500.00 to purchase a replacement canine capable of certifying immediately upon purchase by the police department.

OPTIONS

None.

FISCAL IMPACT

The City recently received an unanticipated F.E.M.A. reimbursement in the amount of \$21,684 for labor and equipment costs associated with Hurricane Faye. The General Fund portion of the reimbursement is \$15,922.00 and relates primarily to overtime, equipment and other public safety costs incurred in preparing an emergency response to the hurricane.

If the purchase of a replacement canine and payment of veterinary expenses are approved, an unbudgeted expenditure of \$15,919.80 will be necessary. The General Fund portion of the F.E.M.A. reimbursement will be appropriated during the first budget amendment of FY 08/09 to cover these unbudgeted expenditures.

[End agenda memo]

Commissioner Howell made a motion to approve the purchase of a replacement canine for a price not to exceed \$11,500.00 and to approve the payment of veterinary expenses in the amount of \$4,419.80 associated with the veterinary care of Canine Zeke prior to his passing. The motion was seconded by Commissioner Manry.

ROLL CALL:

Commissioner Howell	"YES"
Commissioner Manry	"YES"

Commissioner Rogers	"YES"
Vice-Mayor Van Sickle	"YES"

The motion carried 4-0.

Mr. Otte asked that everyone present recognize our K-9 Officers Albert Coppedge and Dale Hampton for the great job that they do.

AGENDA ITEM 5. Ordinance 2008-42, Chapter 21, Article I – Chapter 180 Utility Service Area SR60 W - 1st Reading

Mr. Otte reported on Agenda Item 5. The full staff memo is incorporated into the minutes.

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

RECOMMENDATION

Staff recommends approval on first reading of Ordinance 2008-42 establishing a Chapter 180 Utility Service Area along State Road 60 west of US Highway 27.

BACKGROUND

The ordinance amends the city code to enact a utility service area under Chapter 180 of the Florida Statutes. The proposed service area, shown on the attached map "Chapter 180 Utility Service Area – State Road 60 W Corridor," extends along SR 60 westward from US Highway 27 approximately 3 miles. The action will establish Lake Wales as the priority provider of utilities for the area and is proposed in anticipation of the CSX project in Winter Haven and the "spin off" of industrial uses along the SR 60 corridor west of city.

Per the ordinance, the service area will include any property lying within or partially within the described boundary. The boundary runs approximately 1.5 miles south of SR 60 and 0.5 miles north of the highway. The western boundary is the Seaboard Coastline Railroad, approximately 3 miles west of US 27; the railroad is also the boundary of the Lake Wales' utility service area per agreement with Winter Haven.

The SR 60 corridor west of US 27 has a number of existing industrial uses, and vacant land along the highway is envisioned as appropriate for industrial development because of its access to major state highways, railroads, and the airport. Land annexed into the city west of the airport, including the Crews and Sealy properties, has been designated for industrial land use. Several area property owners have contacted the city regarding development of industrial projects. Extension of utilities to the area will be necessary so that full services are in place at the time they are needed by developers.

The preferred scenario is that land proposed for industrial development will be annexed into the city to increase the city's non-residential tax base. With annexation of properties west of the airport, the city has a solid base for further annexations. However, the number of older commercial and industrial properties along the highway may pose challenges for achieving the contiguity necessary for annexation of vacant parcels. Although the code requires an annexation agreement as a condition of service, the annexation cannot be carried out if the property never becomes adjacent to the city limits.

Under the current code, services cannot be provided to properties outside of the city limits unless there is a prior agreement or the State's Department of Environmental Protection requests the service. The amendment will allow service in the specified Chapter 180 area even if annexation cannot be achieved.

Staff strongly recommends that the city work toward annexation of property in the area so that the tax base can be expanded. Meanwhile, the amendment will give Lake Wales the first right to provide utility service along the corridor. Under the state statute, the city is obligated to provide service in a Chapter 180 area if it is requested and available.

Staff does not support the widespread use of Chapter 180 service areas. A Chapter 180 service area extending five miles from the city limits was dropped in 2005 to prevent providing services for new residential development on land that could not be annexed. The measure assisted in preventing "leap frog" development or urban sprawl and enhancing the city's tax base.

Please note that Chapter 21 is undergoing a number of changes. At the commission's last meeting, Ordinance 2008-43 was approved, allowing connections to city utilities if requested by the state to correct environmental issues. At that same meeting, a first reading was scheduled, but tabled for further revisions, to strengthen requirements for pre-treatment of industrial wastewater.

FISCAL IMPACT

No direct fiscal impact has been identified. The amendment will allow provision of services without annexation, weakening the incentive for owners to work with other property owners for contiguity. Expenditures for extension of services will be required if the city is to provide services to area properties.

OTHER OPTIONS

Do not approve the amendment. If no change is made to the ordinance, the city is not legally the priority service provider for the area.

[End agenda memo]

Ms. Delmar read Ordinance 2008-42 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, TO AMEND CHAPTER 21, UTILITIES, LAKE WALES CODE OF ORDINANCES, BY DEFINING THE CITY OF LAKE WALES UTILITY SERVICE AREA IN ACCORDANCE WITH CHAPTER 180, FLORIDA STATUTES; PROVIDING FOR AN EFFECTIVE DATE.

Commissioner Rogers asked for assurance that there was no fiscal impact involved in adopting the proposed ordinance. Mr. Otte said the adoption of this ordinance does not create a fiscal impact.

Commissioner Howell made a motion to approve Ordinance 2008-42 after first reading. The motion was seconded by Commissioner Rogers.

ROLL CALL:

Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Commissioner Manry	"YES"
Vice-Mayor Van Sickle	"YES"

The motion carried 4-0.

AGENDA ITEM 6. Ordinance 2008-45, Chapter 23, Amendments to Zoning, Land Use and Development Regulations – 2nd Reading & Public Hearing

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

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

RECOMMENDATION

Staff recommends adoption of Ordinance 2008-45 on second reading.

The Planning and Zoning Board held public hearings on February 26 and October 28, 2008 and recommended amendments to the Zoning, Land Use and Development Regulations as set forth in the ordinance.

Notice requirements for a public hearing have been met.

BACKGROUND

The Commission approved the ordinance on first reading on December 2, 2008. There were no comments from the public.

Explanations of the proposed changes follow. Section numbers correspond to ordinance sections.

SECTION 1 Cross reference – reclaimed water system requirement

Sec. 23-217.3 Application package (for site development permit)

Plans for reclaimed water systems are required for development of property located in a reclaimed water service area. This change directs the applicant to the utilities section of the code (sec. 21-124) which designates those service areas.

SECTION 2 Public notice reimbursement – administrative schedule

Table 23-242 LAND USE APPLICATIONS – REQUIRED FEES

This amendment removes public notice reimbursement charges from the table of land use application fees and adds a note that these costs will be kept on an administrative schedule. The change will allow staff to adjust advertising and other notice expenses without an ordinance amendment. A recent analysis of department advertising costs showed that the actual costs in the past year exceeded reimbursement charges.

SECTION 3 Add fees for waivers and special permits for single-family expansions

Table 23-242. LAND USE APPLICATIONS – REQUIRED FEES

Two fees are added to the table. A fee for “waiver of strict compliance” of \$50 will allow a low-cost application for planning board review of waivers of requirements such as landscape buffer widths and parking lot layouts. Under the current schedule, a site plan fee, running \$170 and up, is charged for these requests, regardless of how minor. A fee for “special permit for expansion of a dwelling unit” of \$50 is proposed for the same reason. Both changes are designed to reduce costs to the applicant for minor requests.

SECTION 4 Reorganization of procedure for appeals

Sec. 23-244 Appeals and variances

No substantive changes are proposed in this section. Reorganization of the section will improve clarity. *Rec. P&Z 2-26-08.*

SECTION 5 Allow temporary living quarters in emergency declared by city manager

Sec. 23-301.2. General regulations for structures, b. Temporary structures

The code allows the use of temporary structures for housing in a city emergency declared by the city commission. This amendment allows quicker response by authorizing the city manager to declare an emergency upon the recommendation of the building official. Please note that the Post-Disaster Plan being prepared by Polk County and all of the cities within the county may prompt other changes to emergency management regulations. One topic under discussion is a time limit for the use of temporary housing after an emergency.

SECTION 6 Reconciliation of chapters 21 and 23 – utility requirements

Sec. 23-301.2 General regulations for structures, d. Water and sewer facilities

This amendment removes requirements for mandatory connection to sewer, water, and reclaimed water systems because Chapter 21 - Utilities governs these systems. In the zoning regulations, the requirement that no building shall be occupied unless it is connected to utilities is revised to state that no dwelling or principal building will be permitted without plans for connections to utilities. A certificate of occupancy cannot be issued without these utilities in place. This change has been endorsed by the Building Official, Cliff Smith.

SECTION 7 Exemption from tree replacement requirements under approved park plan

Sec. 23-302. "Land preparation" subsec. 302.2.b. "Tree replacement" and

Sec. 23-310. "Recreation area" subsec. a. "Design criteria"

Trees removed for land development must be replaced or payment must be made to the tree replacement fund. These amendments will allow selective removal of trees in parks without replacement if the work is done in accordance with an approved plan. Dense stands of trees in the central park in Mayfair, for example, can be thinned selectively to create a more attractive and usable park. However, trees removed for buildings and facilities, including retention areas are not exempt from the replacement requirement. The provisions encourage the location of structures in areas where there are no or few trees. *Rec. P&Z 2-26-08*

SECTION 8 Correction – required right-of-way dedication for minor collector

Table 23-303C. RIGHT-OF-WAY DEDICATION REQUIREMENTS

This amendment corrects a typographical error in one of the tables dealing with required right-of-way widths. The width for a minor collector roadway is corrected from 60 feet to 66 feet to correspond to the street classification system in sec. 23-303.6.

SECTION 9 Curbing of landscaped islands

Sec. 23-306.2. Layout of off-street parking areas, subsec. b. Paving and marking and

Sec. 23-307.1 Landscaping requirements, Vehicular use areas

The code requires curbing, wheel stops or other method for protecting landscaping at the head of parking spaces. These amendments add the same protection to landscaped islands, located at the ends of rows of parking or between parking spaces. Please note that requirements for parking lots can be waived by the planning board for infrequently used parking lots or other special circumstances.

SECTION 10 Modification of landscaping requirements in parking areas

Sec. 23-307. Landscaping requirements. Subsec. 1.c. parking lot requirements, 2. Interior

The code requires that lines of parking spaces be broken up with landscaped areas, or islands. This amendment clarifies that these additional landscaped areas are not required for parking spaces that are located along a landscaped buffer.

SECTION 11 Prohibit use of required landscape buffers for storm water retention

Sec. 23-308. Drainage

The code requires landscaped areas along roadways to buffer parking areas and the back yards of residential developments. It is tempting for developers to use these landscaped buffers for storm water retention, particularly on a small site. The two uses are incompatible in most cases, because very little

landscaping is permitted in a typical retention area by the water management district (SWFWMD). This amendment will prohibit required landscaped buffers to double as retention areas. However, the amendment does not prohibit landscaping in retention areas. Note also that the code requires landscaping along the edge of a retention area where it abuts a roadway or access way.

SECTION 12 Updating of utility easement requirements

Article III. General Devel. Stds. Division 1. Land Development, Sec. 23-309. Easements

Specific requirements for easements are removed from this section to eliminate conflicts with code Chapter 21, Utilities. The new language requires that easements must be in place (recorded) prior to the issuance of a building permit for development of a lot. The prohibition on landscaping within easements is removed in favor of allowing landscaping only with an approved plan. Landscaping can be allowed in an easement, provided plantings are not too close to sewer and water mains. The amendment also clarifies that structures are not allowed in easements unless approved by the director of public works.

SECTION 13 Correction – approval of special sales on private property

Sec. 23-343. Auctions, sales, and events, temporary

This amendment corrects a contradiction within the ordinance. Sec. 23-343 states that temporary sales and events are permitted with site plan approval, provided they run for 3 days or less, while the table of uses (Table 23-421) requires a special exception use permit. Subsection b is amended to state that a special permit is required. This requirement is meant to control special events in commercial parking lots. (Note that churches, schools, and government properties are exempted from this requirement under sec. 23-343.c.) The special permit review of the layout ensures that the event does not conflict with commercial use of the parking area or compromise the safety of vehicles and pedestrians. References to "garage sale" are changed to "yard sale" to correspond with the referenced section title. A cross-reference is also added to Table 23-541.

SECTION 14 Corrections – Home occupation regulations

Sec. 23-348. Home occupations

An incorrect cross-reference is removed from the regulations and wording improved for clarity.

SECTION 15 Prohibited uses – clarification

Sec. 23-421. "Permitted and special exception uses allowed in zoning districts"

Language is added to emphasize that land uses that are not allowed by right, by special exception use permit, or PDP are prohibited.

SECTION 16 Table of Uses - Modifications

Table 23-421 "Permitted Uses and Special Exception Uses in Standard Zoning Districts"

Prohibit dormitories in single-family and duplex zones This amendment will strengthen protections for single-family neighborhoods by prohibiting dormitories in residential districts except in R-3 -Multi-family districts. Currently, the code allows dormitories by special permit in all residential districts and in several commercial districts. Specifically, the amendment will prohibit dormitories in single-family (R-1) and duplex (R-2) districts. The definition of dormitory is also amended to stipulate that any residence for more than 5 unrelated adults is a dormitory. (See Section 24 for definition changes.)

Require special permit for "heavy" construction service businesses in LCI zone The change corrects an oversight. Currently, such businesses are a permitted use. "Heavy" businesses are those which are hazardous or that entail outdoor storage, operations, or sales. Such businesses may not be compatible in the LCI-Limited Commercial Industrial district and should be reviewed through the special permit process. This amendment is supported by the Economic Development Director.

Show "public facilities and offices" as permitted uses in CN (Conservation) and R (Recreation) districts

This corrects a discrepancy between the table and a footnote. The table does not show public facilities and offices as permitted in the CN and R districts. An existing footnote states that "public facilities and offices" are permitted in all zoning districts with "approval by the city commission and a courtesy review and recommendation from the planning board."

SECTION 17 Correction - setback from right-of-way – nonresidential districts

Table 23-422B footnote #1

The amendment changes the front setback requirement in nonresidential districts from ½ of the “dedicated” right-of-way width of the street on which the lot fronts to ½ of the “required” right-of-way width. (The corresponding requirement for residential districts was amended by Ordinance 2007-33.) The current language has presented problems where the dedicated (existing) right-of-way width differs from the required width. For instance, some portions of US 27 have dedicated right-of-way widths of 250 feet, far in excess of the 120 feet required under our ordinance for an arterial highway. Strictly construed, this footnote would require a 125-ft. setback for a building in this case. Half of the required right-of-way would allow the building to have a setback of 60 feet.

SECTION 18 Building setbacks in C-5 Village Center District

Table 23-422B DIMENSIONAL AND AREA STANDARDS – NONRESIDENTIAL DISTRICTS, footnote #3

This amendment addresses an omission in the table: building setback requirements for C-5 districts not developed as Planned Development Projects (PDPS). The C-5 district was primarily intended for new village centers, such as the one proposed in Mayfair. The table states that the building setbacks will be determined through the PDP review to allow flexibility in design. However, there is one area that was designated C-5, but was not developed as a PDP. That is the commercial area on the southeast corner of First Street and SR 60. This amendment provides that the building setbacks in a C-5 district not determined by a PDP will be the same as those in the C-2 district.

SECTION 19 Setbacks for carports – correction

Table 23-522 ACCESSORY STRUCTURES RESIDENTIAL PROPERTIES restrictions for “Detached carports or garages”

The code requires that detached garages meet the setbacks for principal buildings (10' side, 20' rear) rather than the 5-foot setback allowed for small sheds. Inadvertently, the same restriction was not applied to detached carports. This amendment corrects the discrepancy. The amendment also allows such structures to be built with the same front setback as the dwelling in cases where the dwelling does not meet the required front setback.

SECTION 20 Exemption on height restriction for required retention pond fences

Sec. 23-524. Fences and hedges (residential uses), **subsec. b. Dimensional requirements**, and **Sec. 23-543.c. Dimensional requirements** (for fences, non-residential uses)

This amendment will allow fences to exceed the height restriction if required by the water management district (SFWFMD) for a retention area. Currently, a waiver from the planning board is required. A provision is also added to allow the planning board to allow fences to exceed height restrictions for security at industrial sites located outside of industrial zoning districts.

SECTION 21 Regulations for swimming pools – accessory to residential use

Sec. 23-527. Swimming pools and

SECTION 22 Regulations for swimming pools – accessory to non-residential use

Sec. 23-546. Swimming pools

Modifications are necessary in this section to correspond with updates to the building code. A cross-reference error is also corrected. The updates to sec. 23-527 apply to swimming pools that are accessory to both residential and non-residential uses. Rather than duplicate the regulations, a cross-reference to sec. 23-527 is added and the existing regulations are removed from sec. 23-546.

SECTION 23 Residential lots in areas of special flood hazard

**Article VI. RESOURCE PROTECTION STANDARDS,
DIVISION 1. DEVELOPMENT IN FLOOD PRONE AREAS**

This amendment implements a comprehensive plan policy (Future Land Use policy 3.11) stating that “no new residential lots shall be created that are entirely within the 100-year flood zone.” Specifically, the flood protection regulations (Sec. 23-604) are amended to prohibit the construction of a single-family house or duplex building on a lot created after October 1, 2008 if the lot is entirely in an area of special flood hazard. Other amendments provide cross-references. The prohibition will allow houses to be built on lots on the edge of a floodplain, but not in the center. Although there is very little residential development in flood plains in Lake Wales, there are several large, undeveloped parcels that have significant wetland and flood plain areas. Staff is working on additional amendments to strengthen regulations for these areas.

SECTION 24 Definitions - Sec. 23-802

Three definitions are amended. “Dormitory” and “Household” are redefined to strengthen regulation of group housing. Language stating that a dormitory provides housing for students affiliated with a school is eliminated. The definitions will now specify that any dwelling that houses more than 5 unrelated people is a considered a dormitory. (A related amendment removes dormitory as a use allowed in single-family and duplex zoning districts. See Section 14 of ordinance. Dormitories will be allowed only in multi-family districts.) These changes are in line with Polk County regulations. The definition of “Waiver” is amended to eliminate regulatory language and state simply that a waiver is permission to deviate from a requirement of the chapter.

OTHER OPTIONS

The City Commission may choose to defer, eliminate or modify recommended amendments.

FISCAL IMPACT

Changes to the schedule of fees will allow public notice reimbursement charges to keep pace with city costs.

[end agenda memo]

Ms. Delmar read Ordinance 2008-45 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 23, ZONING, LAND USE AND DEVELOPMENT REGULATIONS BY REMOVING PUBLIC NOTICE FEES AND AUTHORIZING AN ADMINISTRATIVE SCHEDULE FOR SUCH FEES; MODIFYING THE SCHEDULE OF ZONING FEES; ALLOWING THE USE OF TEMPORARY LIVING QUARTERS IN AN EMERGENCY DECLARED BY THE CITY MANAGER; REQUIRING A TREE PLAN FOR PARKS WITHIN DEVELOPMENTS; AMENDING LANDSCAPING REQUIREMENTS IN PARKING AREAS; PROHIBITING THE USE OF LANDSCAPED BUFFERS FOR STORMWATER RETENTION; UPDATING REQUIREMENTS FOR UTILITY EASEMENTS; AMENDING THE TABLE OF USES TO PROHIBIT DORMITORIES IN RESIDENTIAL DISTRICTS AND REQUIRE A SPECIAL PERMIT FOR HEAVY CONSTRUCTION SERVICE BUSINESSES IN LCI LIMITED COMMERCIAL INDUSTRIAL DISTRICT; ADDING SPECIFIC BUILDING SETBACK REQUIREMENTS FOR C-5 VILLAGE CENTER DISTRICT; UPDATING REGULATIONS FOR SWIMMING POOLS; PROHIBITING SINGLE-FAMILY HOUSES AND DUPLEXES ON A NEW LOT ENTIRELY WITHIN A FLOOD PLAIN; MAKING MINOR CHANGES AND CORRECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

OPENED PUBLIC HEARING

There were no comments made by the public.

CLOSED PUBLIC HEARING

Commissioner Manry made a motion to adopt Ordinance 2008-45 after second reading and public hearing. The motion was seconded by Commissioner Howell.

ROLL CALL:

Commissioner Manry	"YES"
Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Vice-Mayor Van Sickle	"YES"

The motion carried 4-0.

AGENDA ITEM 7. Resolution 2008-21, Outside City Utility Rate Surcharge

Mr. Otte reported on Agenda Item 7. 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 Resolution 2008-21 which:

1. Opposes any change in a municipality's water and sewer utility rate-making authority as established by the Florida Legislature in '180.191 F.S.
2. Specifically protests and opposes the effort by Miami-Dade County to prohibit municipal water and sewer utilities from levying a surcharge to customers located outside the city limits unless an equal surcharge is levied on customers located inside the city limits.
3. Directs the City Clerk to forward a copy of the Resolution to the Polk County Legislative Delegation, the President of the Florida Senate, the Speaker of the Florida House of Representatives, Florida Governor Charlie Crist, and the legislative leadership at The Florida League of Cities, Inc.

BACKGROUND

Section 180.191, Florida Statutes (F.S.) allows municipalities to implement up to a 25% surcharge to those customers living outside the city limits without performing a cost study and up to a 50% surcharge if deemed appropriate by a cost study. The City of Lake Wales is among the Florida cities that imposes a 25% surcharge to outside city customers (see Outside City Surcharge Survey).

Miami-Dade County's Board of County Commissioners passed resolutions in April 2008 urging Florida legislators to prohibit municipal water and wastewater utilities from levying a surcharge on consumers living outside the city limits. Preambles to the resolutions state that the surcharge amounts to taxation without representation. Both Resolutions state that the surcharge results in unfairness to consumers living outside the City's boundaries when they have no representation, voice or input into City decisions.

These assertions by the Miami-Dade County BOCC are false. All customers of the utility, living both inside and outside city limits, have equal opportunity to appear at rate hearings, which are publicized pursuant to Section 180.136, F.S., giving them a voice in rate-setting matters. The outside city limits surcharge IS NOT a tax, IT IS a fee associated with the increased costs of providing service outside the city limits.

Legal Challenges to Outside City Surcharge

Section 180.191, F.S. has withstood numerous legal challenges. The courts have recognized that the outside city limits surcharge is appropriate because of the inherent cost of service differential and the ownership nature of the in-city customers.

The Florida Supreme Court upheld Section 180.191, F.S. in *Mohme v. City of Cocoa*, 328S. 2D422. Selected statements made by the Court include:

AA different rate may be charged. It is justified because of the difference in cost to furnish services to those without the municipal limits, as compared to the cost to furnish it to those within the municipality, and we believe that the legislature reasonably concluded that there are additional costs attributable to the providing of these services by municipal utility systems and that these costs cannot be pinpointed even under sophisticated cost accounting techniques. Because of the interconnection of the components of a utility system [we cannot pinpoint] the exact additional cost of delivery of utility services to those outside.

The Fourth District Court of Appeals in *City of Pompano Beach v. L.M. Oltman, Gerald F. Glass and Floyd F. Toomey*, 389 So.2d 283; 1980 Fla. App. Lexis 175359 upheld Section 180.191, F.S. Selected statements include:

The City has the clear right to charge higher rates to users of its utility system outside the City than to users inside the City. *Clay Utility Co. v. City of Jacksonville*, 227 So.2d 516 (Fla. 1st DCA 1969); *Mohme v. City of Cocoa*, supra.

Factors Supporting Cost Differential

The Florida legislature recognized that providing utility service outside the city limits was inherently more costly than providing service within the city limits and provided for that inherent cost differential with the surcharge provision of Section 180.191, F.S. Several factors can account for this cost differential and include:

- In-city owners are due a return on their investment in the utility system. The AWWA (American Water Works Association) is the recognized authority on utility rate making. AWWA Manual M-1 acknowledges it is necessary for municipal utility systems to charge a rate differential to outside city limits customers in order that the in-city utility owners are compensated for their investment.
- The municipality is seeking to equalize outside city rates when a water franchise fee or utility tax is charged to inside City customers and not outside City customers.
- The municipality is seeking to normalize its inside City customer costs.
- The municipality can facilitate development by providing utility service outside City boundaries while minimizing potential subsidization by City customers.
- In-city density can provide economies of scale not obtainable in less dense outside City customer groups.
- Permitting costs outside City can be more than in-city costs.

Effects of Eliminating Surcharge

There are potentially devastating effects to repealing the outside city limits surcharge. These effects include:

- Jeopardizing municipalities credit rating for debt as surcharge income is generally considered acceptable revenue for debt coverage tests.
- Jeopardizing existing outstanding debt service instruments which include surcharges in the debt service coverage ratios.
- Allowing environmental impacts resulting from developer installed water & wastewater systems not as efficient or effective as municipal owned systems.
- Eliminating a means for obtaining a fair return on investments owned by the City.
- Eliminating a means for equal cost sharing for services provided by non-tax paying recipients of benefits from community sponsored activities.
- Eliminating a means of equalizing the in-city public service tax.

FISCAL IMPACT

Using FY07'08 as an example, if the 25% outside city utility surcharge is eliminated the fiscal impact on the City's utility revenues is illustrated in the following chart:

WATER & SEWER REVENUE - OUTSIDE CITY 10/1/07 thru 9/30/08

User class	water	sewer	Total
residential	628,799.41	4,936.10	633,735.51
commercial	9,835.64	107,646.64	117,482.28
Total	638,635.05	112,582.74	751,217.79
less 25% surcharge	-127,727.01	-22,516.55	-150,243.56
Revenue w/o surcharge	510,908.04	90,066.19	600,974.23

OTHER OPTIONS

The Utilities Department has already taken steps this year to decrease expenses to offset the already decreased revenues that have resulted from the problems in the economy. If it were necessary to further decrease expenses because of the proposed change to the Florida Statutes, the decrease could only be accomplished through a reduction of services.

Staff believes that the only option is to oppose any legislative action that limits a municipality's ability to establish water and sewer rates for outside city customers that include a surcharge.

[End agenda memo]

Ms. Delmar read Resolution 2008-21 by title only.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, OPPOSING AND PROTESTING ANY CHANGE IN THE CITY'S WATER AND SEWER RATE

MAKING AUTHORITY ESTABLISHED BY THE FLORIDA LEGISLATURE IN SECTION 180.91, FLORIDA STATUTES, AND SPECIFICALLY THE EFFORTS OF MIAMI-DADE COUNTY TO PROHIBIT MUNICIPAL WATER AND SEWER UTILITIES FROM LEVYING A SURCHARGE ON CUSTOMERS OUTSIDE THE CITY LIMITS UNLESS AN EQUAL SURCHARGE IS LEVIED ON CUSTOMERS INSIDE THE CITY LIMITS.

Commissioner Manry asked why Miami-Dade came forward with this. Ms. Delmar explained that the City of North Miami Beach levied an outside city surcharge on customers outside their city limits. On behalf of those customers in the unincorporated county, Miami-Dade county protested that charge and tried to have legislation adopted to prohibit North Miami Shores from levying the outside city surcharge. Miami-Dade reported that they would be discriminated against as a municipality since all over the state municipalities have that ability to levy the surcharge in accordance with Chapter 180.191, F.S. Miami-Dade came back and said if that is the case, then all cities need to eliminate that charge. So, that is in their legislative package that is going up to Tallahassee. They are attempting to remove the surcharge authority from all cities through the state.

Commissioner Manry made a motion to approve Resolution 2008-21. The motion was seconded by Commissioner Howell.

ROLL CALL:

Commissioner Manry	"YES"
Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Vice-Mayor Van Sickle	"YES"

The motion carried 4-0.

AGENDA ITEM 8. Resolution 2008-22, Adopting Revised Application Procedures and Design Guidelines for City of Lake Wales Commercial Building Façade Rehabilitation Program

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 Resolution 2008-22 adopting the "City of Lake Wales Local Commercial Rehabilitation Policy" to replace the City's existing policy.

BACKGROUND

In 2001-2002 the City implemented a commercial building façade rehabilitation program that was funded in part by the Polk County CDBG program. Then on April 16, 2002, the City Commission approved withdrawal from participation in Polk County's CDBG program in order to make individual application to the Small Cities CDBG program. Since then the City has applied for and received funding for two CDBG grants, each for \$750,000.

A third CDBG grant application has been submitted in the same amount to fund improvements to the Lincoln Avenue area and to other downtown areas. This grant application is currently undergoing review, and the City should be notified within the next 30 to 45 days as to whether this application will be funded.

The 2008 CDBG grant that is being applied for encourages the City to use standard implementation procedures and design guidelines for commercial building façades that are rehabilitated with grant funds.

One of the grant application requirements is that the City have an adopted "Commercial Façade Rehabilitation Policy" in place no later than the grant application deadline (the CDBG grant deadline was 9-29-08). This requirement was met on September 16, 2008 when the Commission passed Resolution 2008-17 authorizing the continued use of the existing Commercial Façade Rehabilitation Policy for the 2008 CDBG grant program. The existing policy is titled: "FY02'03 CDBG Façade improvement Guidelines and Application."

A staff member from the CDBG grant agency has recently reviewed this policy and recommends that a new rehabilitation policy be adopted in order to more fully comply with state and federal CDBG program rules. This new policy will be used as a management guide for implementing CDBG funded commercial façade rehabilitation projects.

For this reason, Resolution 2008-22 has been prepared to adopt revised application procedures and design guidelines for the City of Lake Wales Commercial Building Façade Rehabilitation Program for use with the 2008 CDBG grant program.

FISCAL IMPACT

The total proposed project cost is \$750,000, to be paid for by the CDBG grant. Of this amount, \$100,000 will be allocated for commercial building façade improvements. No City funds are allocated for the building façade improvements.

OTHER OPTIONS

None. If the City Commission wishes the grant application to be funded, existing policy must be updated to comply with CDBG program rules.

[End agenda memo]

Ms. Delmar read Resolution 2008-22 by title only.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, RESCINDING THE "FY02'03 CDBG FAÇADE IMPROVEMENT GUIDELINES AND APPLICATION" AND AS A REPLACEMENT, ADOPTING A "LOCAL COMMERCIAL BUILDING FAÇADE PROGRAM POLICY" TO BE USED IN CONJUNCTION WITH FUNDING FROM THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Commissioner Manry made a motion to approve Resolution 2008-22. The motion was seconded by Commissioner Howell.

ROLL CALL:

Commissioner Manry	"YES"
Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Vice-Mayor Van Sickle	"YES"

The motion carried 4-0.

AGENDA ITEM 9. Appointment to Board of Adjustment and Appeals

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

[begin agenda memo, prepared by Captain Patrick Quinn, Lake Wales Police Department]

RECOMMENDATION

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

Board of Zoning Adjustments and Appeals – Members are appointed by the City Commission. The board consists of five (5) regular members. Members must be residents. (3 year term)

One (1) vacancy: term expires 07/01/09 (partial term)

Applying for appointment: Roderick T. Parker, Sr., resident

BACKGROUND

This action is requested to fill a term expiring July 1, 2009 left vacant when Sylvia Rogers resigned. Roderick Parker is recommended for appointment to the Board of Adjustment, based upon an interview conducted on December 9, 2008. The candidate expressed a strong interest in serving on the board, a willingness to perform the required functions of a board member, and an understanding of the board's charge.

He was provided sections of the code pertaining to the duties and responsibilities of the board. Verbal information was provided concerning meeting dates and times, requirement for a quorum, staff reports, site visits, public hearings, and compliance with the Sunshine Law.

OTHER OPTIONS

Make no appointments at this time. However, the City Code requires five members on the Board of Adjustment, and currently, there are only four members.

[end agenda memo]

Commissioner Manry made a motion to appoint Roderick T. Parker, Sr. to serve as a member on the Board of Adjustment and Appeals for a partial term to expire on 07/01/09. The motion was seconded by Commissioner Howell.

ROLL CALL:

Commissioner Manry	"YES"
Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Vice-Mayor Van Sickle	"YES"

The motion carried 4-0.

AGENDA ITEM 10. City Manager Performance Evaluation for period 11/17/07 - 11/16/08

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

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

Mr. Otte's employment contract specifies that a performance evaluation will be conducted 24 months after the initial performance evaluation. Mr. Otte's initial evaluation was conducted in July 2002; therefore, the second evaluation was due in July 2004, at which time it was completed. In accordance with Mr. Otte's contract, this was the last scheduled evaluation. According to this contract, additional evaluations may occur as deemed necessary by the City Commission.

In December 2005, the City Commission completed a City Manager performance evaluation for the period 7/1/04 through 11/15/05. In November 2006, discussion was held by the City Commission, and it was decided to defer the next City Manager performance evaluation until November 2007, at which time an evaluation was completed for the period 11/16/05 through 11/16/07.

At their November 18, 2008 meeting, there was a consensus among Commissioners to conduct an evaluation at this time for the period 11/17/07 through 11/16/08. Performance evaluation forms were completed by the City Commissioners and returned to staff as requested, except that Commissioner Rogers declined to complete an evaluation this year due to his brief tenure on the Commission.

Evaluation forms completed by the Commissioners are available for review in the Human Resources Department.

Two charts showing ratings in the various evaluation categories have been compiled and are attached to this memo.

This item has been placed on the agenda so that the Commission may discuss its evaluation with Mr. Otte.

[end agenda memo]

Vice-Mayor Van Sickle suggested changing the evaluation form. He said that this is an evaluation of the City Manager. It is hard to rate him when having to rate him according to the performance of the different departments. The City Commission does not work directly with the departments. This makes the performance evaluation unfair. There should also be comments to go along with the grade because it does add a lot to the number. Ms. Delmar said that the rating of city services could be removed from future performance evaluations if the Commission wishes. That was just added because a prior Commissioner wanted it.

Commissioner Manry said she liked the performance evaluation because the City Manager is responsible for all the City departments. So, what the Commission is evaluating in the municipal services section is the effects that it can see. There should be an interchange going forward so that if there are specifics then the City Manager can address them accordingly. For example, the condition of the streets was rated low some time ago and they have now been addressed.

Vice-Mayor Van Sickle said that some people evaluate differently than others. So, it is very easy to get a row of numbers. Comments should be added to explain the reason for the numbers. Commissioner Manry said that written words are always subjective and that numbers are the only way to get some sort of consensus. That is why each Commissioner should take the time to approach the City Manager and explain all of these things. Vice-Mayor Van Sickle said that there still should be comments added to the numbers. Commissioner Manry said that if a Commissioner has any questions it is valid to bring them up in a City Commission meeting. She asked Ms. Delmar if over the years she has seen another effective way of doing the performance evaluation. Ms. Delmar said that this way has really worked for us, especially the rating of the services. No evaluation is going to do everything we wish it to do. It is beneficial to have the combination of providing a numerical consensus and then discussing the items in a Commission meeting. Commissioner Manry said that one of the things that is so difficult in getting a consensus among five City Commissioners is that there are some people that think that everyone should get a certain score, a score of five means that person is going to be our next president, a score of three is

good. However, that is something that should be discussed at a City Commission meeting in front of the whole City because this might be something that City people might have a feeling about. It would be good if the City residents had an idea of what each Commissioner meant by a score of one, three, four, etc. Vice-Mayor Van Sickle said that the hardest part that he had in this evaluation is the municipal services because he does not have enough information to give the City Manager a fair rating on it. Commissioner Manry said that is not what this is for. This is for something that is beyond that, the external. The Commission is here to represent the people. She said that this is more to her an evaluation of the City Manager's running of the municipal services rather than what we say the municipal services are doing. Vice-Mayor Van Sickle said that the Commission has to make sure that the other departments that are being evaluated understand that this evaluation is tied to the City Manager's evaluation. Ms. Delmar said that this is the City Manager's evaluation. The intent was not to tie it to the department head's performance. Vice-Mayor Van Sickle said that he has heard comments that some of the folks were interpreting the evaluations as the evaluation of their department. Mr. Otte said that there are probably departments that look at this and see that a score of three is acceptable, and he thinks the departments are better than acceptable. Commissioner Manry suggested that Mr. Otte should make it clear to the departments that it is his evaluation and not the evaluation of the individual departments.

Commissioner Rogers said he did not participate in the evaluation and read the following statement into the record:

"My brief term as a Lake Wales City Commissioner makes it very difficult for me to properly grade our City Manager in the various categories listed on the evaluation sheets.

I do not feel I have yet learned all I need to know in order to be a good Commissioner and I know I am not yet qualified to rate the City Manager's skills in following the direction of the Commission.

While admitting to my lack of experience I will say I feel the city is lacking something with our inability to reach and maintain a better financial position, also our inability to add more businesses to our tax base is of great concern to me. We are losing this battle to our neighboring cities.

My problem with this evaluation is I do not know whether it's the City Manager's fault, the Commissioners fault or a combination of both. A year from now I fully expect to be able to respond to this evaluation process in a positive and helpful way."

Commissioner Rogers added that the Commissioners help make a good City Manager and a City Manager helps to make good Commissioners. We're all supposed to work together. We need to realize that as City Commissioners the City Manager works for the City Commissioners and the Commissioners work for the tax payers. We need to be responsive to the tax payers, City Manager, and to each other. In the coming year we need to pull together, work toward balancing the budget, paying our debts off, and trying to get financially solvent.

Vice-Mayor Van Sickle said the Commission does play a role in giving a high level of guidance on how we would like to see the City run. So, the Commission has to accept the responsibility when things are not being done the way we had hoped. We need to work together to correct it.

Commissioner Howell said she liked the evaluation despite her conflicting ideas of what she thought about the different departments. She said she understands that Mr. Otte is supposed to make sure the Parks Division is doing a great job in cleaning up things, fixing things, etc. But, it is hard when there are only six people trying to do all of Lake Wales. Commissioner Howell said there were a couple of areas that she could have rated a one but because there were not enough of people to do the job she did not because it was not their fault. The City did not have the money to hire additional people to do the job. We need to get better control of the situation. There is only a half person to maintain and repair both of our cemeteries. The rating could have been unacceptable or poor, but what we try to cover it so at least something is being done there. She said she does not agree with some of the rules at the Cemetery. She said someone

told her that if you needed a loved one found there, you would have to pay \$50.00. So, to her, that should be a zero rating. Mr. Otte said he was not aware of that rule. Ms. Delmar said she believed that was a misunderstanding. We have a grave locating fee but that has to do with staking out a grave for a funeral. That might be a misunderstanding that we might need to straighten out with staff. Commissioner Howell said things have to get better because there are not enough people to do the job. She said there should be an evaluation. The City Manager should be evaluated on all of his departments, but she can't do individual departments with him. This has to be an evaluation with his direct contact with her and with his direct contact with them.

Vice-Mayor Van Sickle said we make an order for the things we want done but when we get to the point where there are no more dollars then the employees and the City cannot be responsible because they can't do something that we have directed them to do when there is no money to do it.

Commissioner Manry said we probably need to plan to have a workshop to get more conversation.

CONSENT AGENDA

AGENDA ITEM 11. Lake Wales Little League, Inc. Maintenance Contract Amendment & Renewal

Mr. Otte asked that this item be pulled from the consent agenda and brought back to a different meeting. The contract does not cover lighting, which needs to be added.

AGENDA ITEM 12. Downtown Water Main Phase 2 & 2A

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

[begin agenda memo, prepared by Sarah B. Kirkland, Utilities Support Manager]

RECOMMENDATION

It is recommended that the City Commission:

1. Accept the proposal of \$866,978.65 from Killebrew, Inc for the construction of the Downtown Water Main Phases 2 & 2A construction.
2. Authorize the City Manager to execute the appropriate documents, on the City's behalf, in regards to these much needed water system improvements

BACKGROUND

The City of Lake Wales Utilities Department is nearing completion of the phase 1 upgrade to the Market Street Water Plant's distribution system from the downtown site, which is the starting point, to the southerly and westerly regions of the City's water service areas. Phase 1 included provisions for fire flow to the Grand Hotel, Bank of America and the Downtown business district.

Phase 2 will entail installing 3,220 LF of 8-inch watermain along portions of Third Street N, Central Avenue E, and First Street N to end at Tillman Avenue. Phase 2 will also consist of installing 2,600 LF of 12-inch watermain strategically placed along portions of First Street, North and South to close the gaps that currently exist in the distribution system. The construction of both these phases will expand watermains, from the downtown area of the City. This project is intended to improve public health, safety, and welfare; stimulate the business climate in downtown; and spur economic development to the city.

The City currently has an active construction contract with this contractor to provide construction services.

OPTIONS

Go out for competitive bidding, delay the project by months, and possibly add more cost to the project.

FISCAL IMPACT

The 06-07 CRA Debt Service: Because of the CRA Bond Issue being delayed until the 07-08-budget year, monies were thereby freed up to be used for the various phases of construction of the downtown water main extension project. Phase 2 has \$905,667.23 allocated for construction.

[end agenda memo]

Mr. Otte noted that both this item and the following item involve contracts that "piggy-back" off of the county contract for underground utility work. This firm, Killebrew, Inc., is currently in town doing work and Mr. Otte said we should save on the mobilization charge. For that reason he is presenting this arrangement rather than going out to bid.

AGENDA ITEM 13. Lake Ashton Interconnect – Installation of Underground Vault

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

[begin agenda memo, prepared by Sarah B. Kirkland, Utilities Support Manager]

RECOMMENDATION

It is recommended that the City Commission:

1. Accept the proposal of \$116,471.50 from Killebrew, Inc (for which the City of Lake Wales and City of Winter Haven will share the cost at 50/50) for the construction of the Lake Ashton Interconnect.
2. Authorize the City Manager to execute the appropriate documents, on the City's behalf.

BACKGROUND

The City Commission approved at its October 16, 2008 Commission meeting a proposal for Killebrew Construction, Inc, to permit and construct the city's portion of the Lake Ashton Interconnect with the City of Winter Haven. At the time, Winter Haven's representative was amenable to the above ground installation. Upon further review by Winter Haven utilities staff, it was conveyed that they no longer agreed with our staff about placing the interconnect above ground, but wanted it placed in a vault. This significant change in design increased the initial cost proposal from \$87,292.00 to \$116,471.50; therefore, increasing each city's portion by \$14,589.75 to a total cost for each city of \$58,235.75.

OPTIONS

None. This interconnect is required as set forth in the Service Area Agreement.

FISCAL IMPACT

\$50,000 was included in the FY08'09 Budget for the Lake Ashton Interconnect project. The additional \$8,235.75 will be funded by water impact fees. The water impact fee account had a balance of \$191,245.71 at 9/30/08, and appropriation of additional funds for this project will be included in the first budget amendment for FY08'09.

[end agenda memo]

AGENDA ITEM 14. Award of Bid to Mid Florida Diesel for Generator Repair

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

[begin agenda memo, prepared by Sarah B. Kirkland, Utilities Support Manager]

RECOMMENDATION

It is recommended that the City Commission:

1. Award the request for bid for generator maintenance to Mid Florida Diesel for Generator Repair.
2. Authorize the City Manager to execute the appropriate documents, on the City's behalf, in regards to this bid award.

BACKGROUND

City staff issued a Request for Proposals for Generator Repair on August 28, 2008. Proposals were due on September 23, 2008, and no proposals were received. Therefore on October 14, 2008, proposals were allowed to be submitted and opened in the commission chambers for evaluation. Items staff took into consideration, as main factors during the review process were cost and response time.

Four sealed bids were received; with Mid Florida Diesel located in Bartow, Florida, being the lowest bidder. City staff also makes this recommendation based on the proximity and response time in the event of a generator emergency.

OPTIONS

None. Preventative maintenance is necessary for the varied sized generators that operate city facilities in the event of an emergency.

FISCAL IMPACT

Monies for generator maintenance are budgeted in the 08'-09' operating budgets for both the Water and Wastewater Departments. The budget line items are funded from operating revenues.

[end agenda memo]

AGENDA ITEM 15. FDOT Letter of Agreement

Mr. Otte reported on Agenda Item 15. The full staff memo is incorporated into the minutes.

[begin agenda memo, prepared by Sarah B. Kirkland, Utilities Support Manager]

RECOMMENDATION

It is recommended that the City Commission:

1. Authorize the Mayor to execute the appropriate documents, on the City's behalf.

BACKGROUND

The City has water and sewer lines in the FDOT (Florida Department of Transportation) right of way alongside US 27. When FDOT announced that it was going to widen US 27 from SR 60 to Interstate 4, the City entered into a Joint Participation Agreement with the FDOT. The agreement provided that the City would use FDOT's engineer and contractor in case any conflicts developed between the widened highway and its new stormwater structures, and the existing City utilities. If a conflict was identified, their contractor would relocate the City's utility lines during the 27 road widening project at the City's cost. (That the widening resulted in some conflicts that result in City costs to move the City's lines is typical of such widening projects.)

A number of utility conflicts have been identified, and some have been resolved. City staff has since approached FDOT and asked for a six year extension period which would allow time for City staff to formulate a plan in which the remaining city utility lines in the FDOT right-of-way in conflict (an possibly other lines in the FDOT right of way that are not presently in conflict) would be removed and put into private easements. This six year time period would also allow City staff the time needed to plan, budget, and acquire private easements for future relocations. Staff has been successful in acquiring utility easements for this purpose from the owner of the Peace Creak Plaza development. Staff has further identified additional property owners along the 27 N corridor to approach and request a private easement.

OPTIONS

Lines in conflict must be moved in some manner in order to resolve the conflict. For lines not in conflict, the City could chose not to relocate those City's utility lines out of the DOT right-of-way and risk the chance of having to relocate them eventually when the State determines to widen the road again, probably at a much higher cost. It is more likely at that time the properties will be developed, which will make it more difficult to obtain easements.

FISCAL IMPACT

There is no up front cost to the City to enter in to this agreement. The City would incur cost at such time when the lines are actually relocated by staff at a later date.

[end agenda memo]

END CONSENT AGENDA

Vice-Mayor Van Sickle questioned Consent Agenda Item 13, Lake Ashton Interconnect – Installation of Underground Vault. He said that he has a real concern with piggybacking instead of going out to bid. He asked if anyone had looked at the contractor's estimate because he did not agree with some of the prices. Mr. Torrance said any thing we do in those contracts is based on the actual material. So, if the estimate is \$800.00 and the actual cost is \$500.00 then we only pay \$500.00. The number in the contract is only a "not to exceed" number. Mr. Otte said he has been involved in some of the meetings on the US 27 project and he has been impressed because our Utility Department has followed up very stringently to find out what was charged to us and what was not. Some of the charges we are pursuing are ones that were inaccurate. The degree to which they have followed up is very impressive, which is unusual for a municipal utility. He said he is very confident that close tabs are being kept on the contracts.

Commissioner Manry made a motion to approve Consent Agenda Items 12, 13, 14 and 15. The motion was seconded by Commissioner Howell.

ROLL CALL:

Commissioner Manry	"YES"
Commissioner Howell	"YES"
Commissioner Rogers	"YES"

Vice-Mayor Van Sickle "YES"

The motion carried 4-0.

COMMUNICATIONS & PETITIONS

CITY COMMISSION TRACKING REPORT

Interconnect with Winter Haven at Lake Ashton: Mr. Otte reported that this item will be coming off the tracking report shortly because we are working on that.

Vice-Mayor Van Sickle said the contractor had requested a waiver or an easement to go across the golf course. He asked if the developer had gotten back to him. Utilities Director Ray Creel said yes.

Commissioner Rogers asked if the million dollars that the City took out of the swimming pool fund had been replaced. Mr. Otte said we have not taken any money out of that account. What we did was said we want to be able to do that if we needed it during this period. We just got a sizeable check from Joe Tedder's office last week. Things are looking better for us. He said he spoke to David Smith about this since there is great interest in putting that on the tracking report but after talking to Ms. Delmar the tracking report is really about things that come up at Commission meetings. He said he still would like to keep it on the front burner by creating a place on the financial schedules that is easy to find in the memo to reference that. If we take any of that money it will state the plan for putting the money back into the account.

Commissioner Rogers asked if we got a check back from the county on the money paid on the Barney's Dream playground equipment. Mr. Otte said we haven't submitted a request for the money because we just issued a purchase order to the equipment. Once we pay for it we will immediately request reimbursement from the County.

Commissioner Rogers asked if we ever got the \$10,000 back that Mayfair owes us. Mr. Otte said no. He said he sent them an email today reminding them of that. The Finance Department sent them an invoice that came back because they were no longer at that address. So, we sent the invoice to their other office.

Mr. Otte introduced the City's new Finance Director Dorothy Pendergrass.

PUBLIC COMMENTS

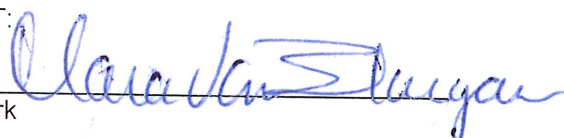
David Smith, Babson Park, asked for clarification that the swimming pool money account would be referenced on the financial report. Mr. Otte said that it will be referenced in the finance report agenda memo. It will show if the City borrows any money from that account and the plan for paying the money back. Ms. Delmar said that the information is already in the financial statement portion. It will now be included on the first page of the cover memo. Financial statements can also be found on the City's website. She said that the balance of the swimming pool account as of September 30 was \$1,037,852.00, which includes \$37,852 in interest, and as of December 15, today, it was \$1,038,756.70.

There being no further business the meeting was adjourned.



Mayor/Commissioner

ATTEST:



City Clerk