

The regular meeting of the Lake Wales City Commission was held on January 5, 2010 at 6:00 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor L. Jack Van Sickle.

INVOCATION

The invocation was given by Dr. Jim Moyer, Warner University

PLEDGE OF ALLEGIANCE

COMMISSIONERS PRESENT: Terrye Y. Howell; Lee A. Wheeler, III.; Jonathan Thornhill; John Paul Rogers; Mayor L. Jack Van Sickle.

COMMISSIONERS ABSENT: None

CITY REPRESENTATIVES PRESENT: Judith H. Delmar, City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk.

MAYOR

PRESENTATIONS

Police Chief Herb Gillis made presentations to the following in honor of the good work they did on December 30th in a child abduction case that resulted in the safe recovery of the children and the arrest of the perpetrators: Officers Patrick Quinn, James Foy, Tim Harrell, Daniel Roberts, Lawrence McCalley, William Hlas, Griffin Crosby; Detectives Michael Smith, Tiffany Holden, Mark Stroup, Bruce Yoxall, Ed Palmer; and IT Technician Matthew Smith

CONSENT AGENDA

Agenda Item 5. APPROVAL OF MINUTES: December 9, 2009, Workshop Meeting

Agenda Item 6. Award of Bid to Fort Bend Services, Inc. for the Purchase of Polymer

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Sarah Kirkland, Utilities Project Supervisor]

SYNOPSIS

The City's Public Works Department Utilities Division made a request for bid for the purchase of polymer, which is a necessary chemical to aid in the waste water treatment process. Commission approval is being sought for the award of bid for this purchase.

STAFF RECOMMENDATION

It is recommended that the City Commission:

1. Award the bid to Fort Bend Services Inc. for the Purchase of Polymer.
2. Authorize the City Manager to execute the appropriate documents on the City's behalf in regards to this Purchase.

BACKGROUND

The use of polymers optimizes the treatment process; thus yielding better quality sludge that could not be obtained otherwise. The proper selection and use of a polymer will often significantly reduce the overall treatment costs of producing public access reuse. Sometimes these savings are hidden through less obvious concerns, such as sludge disposal costs, labor costs, or reduced backwash costs. The use of a polymer, in lieu of an inorganic coagulant such as alum, significantly reduces the amount of sludge that is generated in the treatment process. The cost of disposing of these sludges in landfills has steadily increased. Consequently, it is a significant economic benefit when polymer is employed. The proper selection and use of a polymer often results in extended filter runs, reduced backwash times, and lower energy costs, resulting in significant savings as well. The proper selection and application of a polymer can simplify operations by improving overall performance of the treatment process; thus reducing the probability of treatment plant upsets.

Staff made a request for bid for the purchase of polymer, with a bid open date of December 11, 2009. There were three responsive bidders, with Fort Bend Services, Inc, being the apparent low bidder. Staff has done work with Fort Bend Services, Inc, in the past and has been pleased with the product the company provides and professionalism this company exhibits. Therefore, staff requests commission approval to award the bid for purchase of bulk polymer to Fort Bend Services, Inc. The initial contract terms as stated in the attached agreement call for the initial contract period to begin on January 6, 2010 and expire on September 30, 2010, if approved by the Commission. The agreement will renew annually on October 1 of each year for up to three (3) additional one (1) year periods. It is also stated in the original agreement, that if either party elects not to renew the agreement that party will endeavor to provide sixty (60) days written notice.

OPTIONS

None at this time. This chemical is necessary in the wastewater treatment process.

FISCAL IMPACT

\$93,000 was placed in the FY09'10 Budget for wastewater chemicals. The portion of the budget set aside for this chemical purchase is \$24,000.

[End agenda memo]

Agenda Item 7. Award of Bid to Appalachian Material Service, Inc. for Sludge Transporting & Disposal

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Sarah Kirkland, Utilities Project Supervisor]

SYNOPSIS

The City's Public Works Department Utilities Division made a request for bid for the transportation and disposal of sludge. Commission approval is being sought for the award of bid for this service.

STAFF RECOMMENDATION

It is recommended that the City Commission:

3. Award the bid to Appalachian Material Service, Inc. to provide the transportation and disposal of sludge services.

4. Authorize the City Manager to execute the appropriate documents, on the City's behalf in regards to this Purchase.

BACKGROUND

The Florida Department of Environmental Protection (FDEP) and the Environmental Protection Agency (EPA) require a system of accountability for proper disposal of all wastewater sludge by the generating wastewater treatment facility. The sludge produced at the Sam P. Robinson Reclaimed Water Treatment Plant as an end product is dried to a consistency of approximately 14 percent solids.

Continuous monitoring of the City's Wastewater Treatment Plant sludge is required. An annual sludge report must be submitted to EPA and FDEP. The City must maintain a record of all sludge produced, treated and applied to the approved disposal land site. The City is responsible for how much sludge is applied to the site, how the sludge is applied to the site, chemical analysis of the sludge on the site, location and size of the sludge application areas and the water levels at the time of application. This level of accountability makes it absolutely necessary for the City to have a qualified hauler transporting and disposing of the sludge.

Staff made a request for bid for a qualified bidder to provide sludge transporting and disposal, with a bid open date of December 1, 2009. There was only one responsive bidder, Appalachian Material Services, Inc. Staff has done work with Appalachian Material Services, Inc, in the past and has been pleased with the transporting and disposal service the company provides. Therefore, staff requests commission approval to award the bid for sludge transporting and disposal to Appalachian Material Services, Inc. The initial contract terms as stated in the attached agreement calls for the initial contract period to begin on January 6, 2010 and expire on September 30, 2010, if approved by the Commission. The agreement will renew annually on October 1 of each year for up to three (3) additional one (1) year periods. It is also stated in the original agreement, that if either party elects not to renew the agreement that party will endeavor to provide sixty (60) days written notice.

FISCAL IMPACT

\$112,000 was placed in the FY '09-'10 Operating Budget for Wastewater Contract Services – Sludge. This amount was based upon FY 08-'09 total expenditures of \$104,650.00.

OTHER OPTIONS

None at this time. The City must maintain a record of all sludge produced, treated and applied to the approved disposal land site. This level of accountability makes it absolutely necessary for the City to have a qualified hauler transporting and disposing of the sludge.

[End agenda memo]

Agenda Item 8. Award of Bid to Odyssey Manufacturing, Inc. for the Purchase of Sodium Hypochlorite

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Sarah Kirkland, Utilities Project Supervisor]

SYNOPSIS

The City's Public Works Department Utilities Division issued an invitation to bid on the purchase of sodium hypochlorite, which is a necessary chemical to aid in the water and wastewater treatment process. Commission approval is being sought for the award of bid for this purchase.

STAFF RECOMMENDATION

It is recommended that the City Commission:

1. Award the bid to Odyssey Manufacturing Inc. for the purchase of Sodium Hypochlorite.
2. Authorize the City Manager to execute the appropriate documents on the City's behalf in regards to this Purchase.

BACKGROUND

Sodium hypochlorite (NaOCl) is a liquid form of Chlorine, a chemical that can be effectively used for water purification. It is used on a large scale for surface purification, bleaching, odor removal and water disinfection. Sodium hypochlorite as a disinfectant has the following advantages: It can easily be stored and transported when it is produced on-site. Dosage is simple. Transport and storage of sodium hypochlorite is safe. Sodium hypochlorite is as effective as chlorine gas for disinfection. Sodium hypochlorite is essential in the treatment of both water and wastewater processing killing pathogens that could prove to be harmful to humans.

Over the past 20 years, disinfection technology and chemical treatment for wastewater have been consistent with the use of Chlorine as the standard chemical to safely and effectively treat wastewater media. The delivery of chlorine to the flow stream ranges from gaseous, liquid chemical, and carrier chemical agents. Today, through the development of an emphasis on improving safety and reducing risk, Sodium Hypochlorite (NaOCl) is commonly being used in various applications where disinfection or sterilization of water is needed. NaOCl is becoming more and more popular based on its inherent chemical characteristics that make it a safer, less costly, lower risk chemical and still effective means to treat wastewater media. Sodium hypochlorite is essential in the treatment of both water and wastewater processing killing pathogens that could prove to be harmful to humans.

Staff issued an invitation to bid on the purchase of sodium hypochlorite, with a bid opening date of November 19, 2009. There were two responsive bidders, Odyssey Manufacturing, Inc and Allied Universal Corporation. Allied Universal Corporation was the apparent low bidder.

Once the bids were reviewed by the review committee, several discrepancies were found with the Allied Universal Corporation bid submittal. Attached is a listing of items that rendered Allied's bid disqualified.

Staff has done work with Odyssey Manufacturing Company in the past and has been pleased with the product the company provides and professionalism this company exhibits. Odyssey Manufacturing Company has also agreed to fix this quoted price for up to December 31, 2012. Therefore, staff requests commission approval to award the bid for purchase of bulk chlorine to Odyssey Manufacturing Company. The initial contract terms as stated in the attached agreement calls for the initial contract period to begin on January 6, 2010 and expire on September 30, 2010, if approved by the Commission. The agreement will renew annually on October 1 of each year for up to three (3) additional one (1) year periods. It is also stated in the original agreement, that if either party elects not to renew the agreement that party will endeavor to provide sixty (60) days written notice.

OPTIONS

None at this time. This chemical is necessary in the water and wastewater treatment process.

FISCAL IMPACT

\$93,000 was placed in the FY '09-'10 Operating Budget for Wastewater Operating Supplies – Chemicals. The portion of the budget set aside for this chemical purchase is \$46,000.00.

\$28,5000.00 was placed in the FY '09-'10 Operating Budget for Water Operating Supplies – Chemicals for this purchase.

[End agenda memo]

**Agenda Item 9. Southwest Florida Water Management District Agreement No. 08C0000023
First Amendment**

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Sarah Kirkland, Utilities Project Supervisor]

SYNOPSIS

This amendment will extend the Southwest Water Management District agreement contract period for the Twin Lakes Pumping Station project which had a previous expiration date of December 31, 2009 by 24 months to December 31, 2011.

It is recommended that the City Commission:

1. Approve the extension to the Cooperative Funding Agreement between the Southwest Florida Water Management District and the City of Lake Wales regarding the BMPs at Twin Lakes.
2. Authorize the Mayor to execute the appropriate documents, on the City's behalf, in regards to this capital project.

BACKGROUND

At the November 27, 2006 City Commission meeting, it was approved that the Commission enter into a joint agreement with the Southwest Florida Water Management District for the Lake Wales Watershed Management Program. The Watershed Management Program was designed to identify deficiencies and recommend corrective measures in the current drainage systems while providing for additional and/or alternative measures to ensure more controlled run-off. The Twin Lakes drainage area has been determined to be the one of greatest immediate concern for the City.

This project is for Implementation of Best Management Practices (BMPs) at Twin Lakes and consists of design and construction of a 23-cfs pumping station and force main from Twin Lakes to Lake Altamaha for subsequent discharge to Peace Creek through the existing 48-inch diameter outfall. A channel pipe connection will be constructed between the east and west lakes so they can be controlled and pumped from a single location on the westerly edge of the two lakes. Per the agreement, the District will reimburse the City 50% of all eligible expenses relating to the design and construction. The total projected cost for the Project is \$600,000 with SWFWMD reimbursing the City \$300,000.

It was anticipated that this was going to be a multi-year-funded project. Implementation of BMPs included the following tasks, design, development of construction documents, construction permitting, land acquisition, bidding and contractor selection, construction of the BMPs and construction engineering and inspection. The watershed covers an area of 0.6 square miles and is located in the City. The goal of this improvement is to minimize flooding in the residential areas surrounding Twin Lakes and the intersection at First Street and S.R. 60, specifically the areas that flooded during and after the 2004 hurricanes.

The City Commission at its March 16, 2008 meeting approved entering into an agreement with the District, which had an original expiration date of December 31, 2009. Staff is now requesting a time extension from the District to allow for the resolution of issues with the pump design, acquisition of easements where applicable, to allow for the completion of permitting from outside agencies and completion of the construction portion of the project. If the Commission approves the request for extension, the contract period will be extended to December 31, 2011.

OPTIONS

Chose not to extend the contract for this project at this time and run the risk that the District will retract all the allocated funding for the completion of this project.

FISCAL IMPACT

\$600,000 for the design, engineering, and construction of this project is included in the FY09'10 budget (\$300,000 SWFWMD & \$300,000 City). The City's portion is funded by the CRA Bond.

[End agenda memo]

Agenda Item 10. Correcting Scrivener's Error in a Contract with Kimley Horn & Associates

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Sarah Kirkland, Utilities Project Supervisor]

SYNOPSIS

It is requested that the Commission correct an error in the public record that occurred because of a scrivener's error in a contract approved at the December 15 meeting.

STAFF RECOMMENDATION

It is recommended that the City Commission correct the public record by approving contract number #09-173 with Kimley Horn & Associates.

BACKGROUND

The City Commission at its December 15, 2009 meeting approved contract #09-01 to utilize Kimley Horn & Associates for the purpose of providing engineering services for the design of a reuse booster station to be installed in the area of the Whispering Ridge Subdivision. Contract #09-01 was the document that the Kimley Horn & Associates representative e-mailed for inclusion in the agenda packet with two originals to follow for signature. Staff did not realize that the original contracts received for signature had a different contract number annotated at the top of the document.

Due to the scrivener's error in the contract included in the December 15 agenda packet, this matter is returned to the Commission to correct the public record. The correct contract number is #09-173.

OPTIONS

None. The contract number approved on December 15 is incorrect.

FISCAL IMPACT

No additional impact.

[End agenda memo]

Agenda Item 11. Bid Document for Purchase of Gasoline and Diesel Fuel

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Bonnie Hodge, Purchasing Agent]

SYNOPSIS

Staff is seeking bids for the purchase of gasoline and diesel fuel

RECOMMENDATION

It is recommended that the City Commission take the following action:

1. Approve the Bid Document #10-191, Invitation to Bid - Purchase of Gasoline and Diesel Fuel.

BACKGROUND

Since 2005 the City has purchased fuel from Smith Brothers Oil utilizing a piggy-back contract between Smith Brothers Oil and Polk County. This has been the most cost-effective option for the City. Smith Brothers has delivered gasoline and diesel fuel to three fuel tanks at Fleet Maintenance, one fuel tank at the Fire Department and to various generator tanks throughout the City with scheduled deliveries two times a week.

In November of 2009 Polk County prepared an Invitation to Bid for Gasoline and Diesel fuel. The bid was awarded to Highlands Oil on November 20, 2009.

Staff has prepared Invitation to Bid #10-191 for the City Commission's review. After approval staff will advertise in the Lake Wales News and the Winter Haven News Chief and the bid will be posted on the City's website. The bid document will be sent to qualified vendors on the City's vendor list.

[End agenda memo]

END CONSENT AGENDA

Commissioner Howell made a motion to approve the Consent Agenda. The motion was seconded by Commissioner Thornhill.

By Voice Vote:

Commissioner Howell	"Yes"
Commissioner Thornhill	"Yes"
Commissioner Wheeler	"Yes"
Commissioner Rogers	"Yes"
Mayor Van Sickle	"Yes"

The motion carried 5-0.

OLD BUSINESS

Agenda Item 12. Ordinance 2010-01, Modifying Rules for Rental of Austin Center – 1st Reading

Katie Kinloch, Administrative Assistant, reviewed Agenda Item 12. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Katie Kinloch, Administrative Assistant]

SYNOPSIS

The Commission will consider requiring the presence of a city employee to supervise the James P. Austin Community Center when rented outside of normal operating hours and requiring reimbursement of costs

to the public. The Commission will also consider prohibiting consumption of alcoholic beverages at events where minors are present.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2010-01 after the first reading.

BACKGROUND

On December 19, 2006 the City Commission adopted Ordinance 2006-48 establishing rules and regulations for the use and rental of city parks and recreation facilities. Rental fees for reserved use of city facilities were also established and are currently being charged.

At the present time when the Austin Center is rented for events in the evenings and on weekends, city staff is on site for the duration of the activity to supervise use of the facility and reduce the incidence of damage. In the current ordinance, however, this requirement for staff presence is only at the discretion of the city manager and there is no provision for reimbursement of cost to the public.

Ordinance 2010-01 removes discretion and requires that at least one city employee be present to supervise the use of the Austin Center building. This ordinance provides for waiver of the requirement when the applicant for a use permit is a regular user of the facility or an established not-for-profit group with no history of misuse of the facility. The ordinance will also allow the city manager to require the presence of an employee when the Tourist Club is rented if it is deemed to be necessary. In cases when a city employee must be present, the user of the facility will be required to reimburse the public for the cost.

Under the current ordinance, consumption of alcoholic beverages is prohibited in all community facilities except the James P. Austin Center where it is allowed under certain conditions. Due to problems that have occurred at the Austin Center where alcohol was being served while minor children were present, it is the Police Chief's recommendation that the City Commission prohibit consumption of alcoholic beverages at events where minor children are present. Exceptions will be allowed where alcoholic beverages were served with a meal or following a funeral or memorial service, and at a wedding reception where a champagne toast is served. A violation will result in closure of the event and loss of deposit. Adoption of Ordinance 2010-01 will eliminate some of the worst alcohol-related abuse of the Austin Center and ease law enforcement concerns for the safety of the public in general and minors in particular.

OTHER OPTIONS

Do not adopt Ordinance 2010-01.

FISCAL IMPACT

Requirement for reimbursement of staff costs to supervise rental of the James P. Austin Community Center will reduce the cost to the public for operating the Austin Center after normal working hours.

[End agenda memo]

Ms. VanBlargan read Ordinance 2010-01 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 18, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES BY REQUIRING THE PRESENCE OF A CITY EMPLOYEE TO SUPERVISE THE AUSTIN COMMUNITY CENTER AND THE TOURIST CLUB WHEN RENTED FOR AN EVENT OUTSIDE OF NORMAL OPERATING HOURS, REQUIRING PAYMENT OF CITY COSTS FOR SUCH SUPERVISORY EMPLOYEE, AND PROVIDING FOR EXCEPTIONS; PROHIBITING THE SERVING OF ALCOHOLIC BEVERAGES AT AN EVENT IN THE AUSTIN COMMUNITY CENTER WHEN MINOR CHILDREN ARE PRESENT AND PROVIDING FOR EXCEPTIONS; PROVIDING FOR AN EFFECTIVE DATE.

In regards to the consumption of alcoholic beverages when children are present, City Manager Judy Delmar said the proposed ordinance would not apply to a Champaign toast at a wedding reception or a glass of wine at a dinner. It was basically intended for social events where an open or pay bar was being used and children were present.

Commissioner Thornhill asked if renters have to sign a hold harmless agreement to release the City of responsibility if the renter is allowing alcohol consumption to minors. Ms. Delmar said that would cause a problem. City Attorney Chuck Galloway said that might present a problem, but we still have sovereign immunity. Any instance where we can preclude it before it happens we would not have to worry about immunities, etc. He did not think there would be a specific liability because someone other than the City was in control when allowing the minor to drink. Commissioner Thornhill asked if alcohol being served with minors present happened all the time or just during a few events. Ms. Delmar said that certain types of events tend to create more problems than others. There has never been an issue, for example, with the Green and Gold Foundation having a party where alcohol is served. There is a problem though with Sweet Fifteen parties, which are primarily a party for teenaged children, when adults are drinking and there is a bar. That is what we are trying to control.

Commissioner Thornhill said he saw a note where the City Manger can waive certain requirements.

Commissioner Wheeler had a question that referred to section (1) A where it lists events that were exempt. He said he wondered about religious services. Though there were no churches that presently meet there on a regular basis, he recalled that after the hurricanes a couple of churches had been displaced, though he did not know if any had made use of the community center. He said that many churches use wine in their Eucharist and wondered if they should list churches as an exemption or leave it under the discretion of the City Manager. Ms. Delmar said that would probably fall under Section (6) B.

Commissioner Howell said that most of her questions had been answered. She did want to make sure though that she understood correctly that anyone renting the Austin Community Center would have to pay for the city employee's time unless they are a non-profit organization. She was not sure the public understood this. Ms. Delmar said that is a reimbursement to the public. The fees they now charge are sufficient to pay for the additional electricity, the air conditioner, basic maintenance, and cleanup, but not for staff time, which up to now has been at City cost. The former City Manager, to save cost, said we just would not have staff present, we will have somebody to just open and close, and renters would be there alone for the duration of the rental. Many times the building was trashed, and we had serious issues with damage so we put the employee back as a city presence during the rentals. This was not a fair cost for the public to assume, but, because of the likelihood of damage, there was no choice. Commissioner Howell said that when her organization rented the center, they were required to clean up after the event. Ms. Delmar said that some people would rather forfeit their deposit than have to clean up.

Commissioner Rogers said that he thought it was great that the City had a nice public facility for people to use. He agreed that we needed uniform policies to regulate what goes on there to make sure the property is taken care of. The City should be reimbursed for the employees as well as the electricity and other utilities. He said he concurs with the ordinance.

OPENED TO PUBLIC COMMENT

Ruth Dampier, 1154 S. Lake Shore Blvd., asked Mr. Galloway if the City was responsible if someone falls and breaks a leg at the lake at the park. Mr. Galloway said that was a factual question he could never answer. The City could be joined as a party defendant in that action because it is on City property. But, whether or not there is any liability is a different question as that would be a question for the judge and jury. Ms. Dampier said she thought the City was opening a bucket of worms because the Austin Center is City property and the City is responsible for what goes on there. She objected to alcohol being served on City property. She understands that the renters would have to pay for it but she thinks it will leave the City financially liable. If the City allows alcohol to go into the building it will lose complete control over what they do. She did not think the police would be able to go in there and determine if a person is an adult or not consuming the alcohol. Ms. Delmar said that what the City was trying to do in the proposed changes

was to control alcohol in the building. Alcohol has been permitted in the Austin Center ever since it opened in the late 1970's-early 1980's and is the only City facility where alcohol is permitted. What they are doing is putting controls on the use to limit the City's liability. About five or six years ago, the City started requiring the presence of police officers, paid for by the renter. There are some organizations that are exempt and some that hire their own security, which is allowed as long as it is agreeable with the Police Chief. This ordinance is to say that if there are any children in the building, with the exception of a glass of wine at dinner, memorial service or a church service, there will not be any alcohol served with minors participating in the event. Ms. Dampier asked if they are having an event and wine is served, if it would be okay for children are allowed to partake. Mr. Galloway said that would not be okay in any event, but the City could not be construed as giving alcohol to minors. If someone is there giving alcohol to minors, they are violating the law no matter what. Ms. Delmar said what they were saying is if alcohol is being served at a party with minors present, it will be closed down. It will be against the law in this town to serve alcohol if children are present unless it falls under the exemptions. Ms. Dampier asked the Police Chief if he ever had to be called to a building where alcohol was being served to tell them no. Chief Gillis said the purpose of the ordinance was to give them the mechanism to allow them to control it.

CLOSED TO PUBLIC COMMENT

Commissioner Wheeler made a motion to approve Ordinance 2010-01 after first reading. The motion was seconded by Commissioner Howell.

Roll Call:

Commissioner Wheeler	"Yes"
Commissioner Howell	"Yes"
Commissioner Thornhill	"Yes"
Commissioner Rogers	"Yes"
Mayor Van Sickle	"Yes"

The motion carried 5-0.

NEW BUSINESS

Agenda Item 13. Resolution 2010-01, S.R. #17 Water Line Relocation from Sessoms Avenue to Osceola Avenue

Tom Moran, Public Works Director, reviewed Agenda Item 13. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Sarah Kirkland, Utilities Project Supervisor]

SYNOPSIS

The Florida Department of Transportation (FDOT) has drainage improvements planned for the section of S.R. #17 from Sessoms Avenue to Osceola Avenue. The City has a 6" water line that needs to be relocated prior to the installation of these structures.

STAFF RECOMMENDATION

It is recommended that the City Commission authorize the Mayor to execute the appropriate documents, on the City's behalf, for the S.R. #17 Water Line Relocations, which are required by the Florida Department of Transportation.

BACKGROUND

The Florida Department of Transportation (FDOT) has drainage improvements planned for the section of S.R. #17 from Sessoms Avenue to Osceola Avenue. The city has a 6" water main along the east side of S.R. #17

that will be in direct conflict with the newly proposed drainage structures FDOT intends to install. FDOT is proposing to install these structures to alleviate a long-standing drainage problem in the above referenced area. This is the first phase of several to improve storm water drainage in this area. These drainage improvements require that the city's lines be relocated within FDOT right-of-way. The attached relocation schedule and relocation plans are at FDOT for review. Staff has been assured that upon first review all was in order with the submittal and will be approved upon the receipt of this resolution. City water crews will mobilize to the site for the relocation of the water line once the FDOT contract has been awarded. FDOT has indicated that the probable start of construction will occur around May or June.

FISCAL IMPACT

None at this time. When staff is ready to perform the relocation of the water line it will be scheduled according to the water department schedule.

OTHER OPTIONS

None at this time. The City is required to relocate its water line upon FDOT request when construction conflicts arise.

[End agenda memo]

Ms. VanBlargan read Resolution 2010-01 by title only.

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
RESOLUTION
UTILITY AGREEMENT
(CITY OF LAKE WALES RESOLUTION 2010-01)**

Commissioner Rogers made a motion to approve Resolution 2010-01. The motion was seconded by Commissioner Thornhill.

Roll Call:

Commissioner Rogers	"Yes"
Commissioner Thornhill	"Yes"
Commissioner Wheeler	"Yes"
Commissioner Howell	"Yes"
Mayor Van Sickle	"Yes"

The motion carried 5-0.

Agenda Item 14. Board Appointments – Polk County Joint Airport Zoning Board (JAZB)

Ms. Delmar reviewed Agenda Item 14. The full staff memo is incorporated into the minutes.

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

SYNOPSIS

The City Commission is asked to remove all previous members appointed to the JAZB and then re-do its appointments made at the December 15, 2009 City Commission meeting. This will clear up all members from the past who may have been removed or appointed incorrectly since the 1970's.

RECOMMENDATION

It is recommended that the City Commission take the following actions:

1. Make a motion to remove all previous members appointed to the Polk County Joint Airport Zoning Board by the City Commission since the adoption of Lake Wales Resolution 78-12; July 18, 1978; and
2. Appoint two new voting members and one alternate voting member to the JAZB. The members appointed will be the same members appointed at the December 15, 2009 City Commission meeting.

BACKGROUND

The City Commission made appointments to the Polk County Joint Airport Zoning Board (JAZB) on December 15, 2009. However, the Polk Transportation Planning Organization has asked that the Commission redo its appointments by first removing all previous members appointed to the JAZB and then appointing new members. This will clear up all members from the past that may have been removed or appointed incorrectly since the 1970s.

December 15, 2009 Appointments

Voting members: Commissioner Rogers
Margaret Swanson, Director of Planning & Development

Alternate voting member: Francisco A. Gioscia, member of Airport Authority Board

OPTIONS

None.

FISCAL IMPACT

None.

[End agenda memo]

Commissioner Wheeler made a motion to:

- remove all previous members appointed to the Polk County Joint Airport Zoning Board by the City Commission since the adoption of Lake Wales Resolution 78-12; July 18, 1978; and
- appoint Commissioner Rogers and Margaret Swanson, Director of Planning & Zoning, as voting members to the Polk County Joint Airport Zoning Board, and Francisco A. Gioscia as an alternate voting member to the Polk County Joint Airport Zoning Board.

The motion was seconded by Commissioner Howell.

By Voice Vote:

Commissioner Wheeler	"Yes"
Commissioner Howell	"Yes"
Commissioner Thornhill	"Yes"
Commissioner Rogers	"Yes"
Mayor Van Sickle	"Yes"

The motion carried 5-0.

CITY MANAGER'S REPORT

CITY COMMISSION TRACKING REPORT

Ms. Delmar reported that there are no changes on the City Commission Tracking Report.

Mr. Galloway said that several months ago, Commissioner Wheeler had suggested the possibility of a review of the Lake Wales Charter. He said if that is the desire of the Commission, he would draft a Resolution for the next meeting putting that into place, and asked that each Commissioner choose one individual who they would like to serve on the Charter Review Committee and let him know at that meeting. Mr. Galloway said that the task could take about a year. Mr. Galloway suggested that, as staff, he and the City Manager also participate in the Committee. He said the committee would bring back suggestions for amendments to the Charter. The Commission could either approve them all or a portion of them, or disapprove all of them at which time they would be subject to a referendum of the voters at the April election. The only way a Charter can be changed is by public vote and any changes approved by the Commission will be on the ballot.

Commissioner Wheeler said the issue was raised because there are some areas of the Charter that are clearly old and in need of some attention. The Charter had not been revised in a long time. Ms. Delmar said that through the years, there had been some minor tweaking but no charter review has been made since the 1970's.

Mayor Van Sickle said this task would take a long while and a lot of effort. We want to make sure we have the right individuals serving on the Committee.

The consensus of the Commission was for Mr. Galloway to bring back a resolution for adoption at the next meeting establishing the Charter Review Committee, and for each Commissioner to say whom they would like to serve on the Charter Review Committee.

COMMUNICATIONS AND PETITIONS

Richard Sylvia, 2063 Bel-Ombre Circle, spoke about his problem with getting a clear title, a second mortgage, or reverse mortgage on his home because his pool was partially built into the easement. He said that in 1983 the City of Lake Wales gave Leisure Pools a permit to build his pool there. A past Commissioner told him that he needed to get a letter from SWFWMD saying if it owns the easement, which he did. He asked how the City of Lake Wales would resolve the problem.

Mayor Van Sickle asked if the City was aware of the problem and City Attorney Chuck Galloway said yes. He and Mr. Otte had met with Mr. Sylvia and his wife several months earlier and he had explained the process to them. He said that the Bel-Ombre plat shows a drainage easement for the subdivision along the northern boundary of the plat and the pool was partially built within the drainage easement. He had explained to Mr. and Mrs. Sylvia that if SWFWMD would release any concerns that it had about the pool encroachment into the easement and if Mr. Sylvia could obtain a release from each of his neighbors who is served by that easement that he could then recommend to the Commission that it partially vacate the easement, only to the extent that the pool encroaches into the easement. Mr. Galloway said he saw the letter that Mr. Sylvia received from SWFWMD saying that it did not have jurisdiction. When this plat was created, DEP had jurisdiction. A SWFWMD representative said that if it currently had jurisdiction, it would have compelled the pool owners to remove the portion of the pool that encroached into the easement. He said that at this stage of the game, based on his understanding, Mr. Sylvia had secured the approval of SWFWMD and also that of his neighbors who are served by the drainage easement along that side of the plat, he would then recommend to this body [the Commission] that it partially vacate. Mr. Galloway said until Mr. Sylvia secured the needed documents he could not recommend partially vacating the easement. Mr. Sylvia also needed to obtain a survey that identifies specifically the pool portion of the easement that would be vacated. He again said the pool encroaches into public property.

Mr. Sylvia said that he has a permit issued by the City through Leisure Pools. He said he would not have a problem securing a release from his immediate neighbors, but he does not know the new neighbors and said he did not see how he could get releases from them. He said he did not see why he would have to get the releases, as it was the City's mistake in issuing the permit in the first place. Mr. Galloway said that it was not the City's responsibility to see if there is encroachment into easements. It is the property owner's responsibility. That the permit was issued does not create a problem that the City must resolve. Mr. Sylvia said that when the permit was issued, Leisure Pool had to show a diagram, so the City was involved. Mr. Galloway said he had no control over what Leisure Pool did that transpired before. He said there were requirements that he believed were necessary and had to be met before he, as the City's counsel, could make the recommendation to the Commission that it vacate public property. Mr. Sylvia asked if he could be given the forms that needed to be signed by his neighbors. He said he did not think he should have to pay again because he already paid to get the permit he had.

Mayor Van Sickle asked how many neighbors lived along the easement and City Manager Judy Delmar said eight to ten.

Commissioner Howell said that as Mr. Sylvia already had the SWFWMD statement, all he had to do is get the neighbors' signatures. Mr. Galloway said that he already had a letter from SWFWMD that says they do not have a problem because they have no jurisdiction, which is fine for our purposes. Commissioner Howell asked if all Mr. Sylvia had left to do is get his neighbor's signatures, and then bring it back to the Commission. Ms. Delmar suggested having them sign a petition. Mr. Galloway said that he could not approve that approach without giving it further thought. It did seem to him that the owners of each of those lots along the easement would have an interest in that easement because it provides drainage for their property. In order for any owner or owners, husband and wives, to relinquish their claim, the City would need a signed document from all the owners of each of those lots showing that they consent to a vacation of this easement. Mr. Galloway said that if the Commission so directs, he could create a form that, if executed, would be sufficient for him to advise the Commission that it is appropriate for the Commission to take this action and partially vacate this easement.

Mayor Van Sickle gave an example of a similar instance when he had to give permission at a hearing for a zoning type issue. The way the letter he received was written, if the recipient had issues, they were to notify them before a certain date. If he did not respond within that period of time, they would assume he had no issues. He asked Mr. Galloway if Mr. Sylvia could send each of the neighbors a similar letter instead of having to get their signatures.

Tom Moran, Public Works Director, rose and stated that he had worked with SWFWMD many times on these ownership issues and they want everyone's name, physical address, and if possible the property identification number. He said he believed that this information should be on the document for the easement release.

Mr. Sylvia said that one of the homes on the easement was empty and falling into disrepair. He did not know who owned it and wanted to know how he would get that information. Mr. Moran said that he could get a mailing address from the Polk County Property Appraiser's Office. He should send a certified letter.

Commissioner Thornhill said that was similar to the way they do it in Code Enforcement when they send out letters to concerned citizens when doing a zoning variance. They are instructed to show up at the meeting if they have concerns. He asked if the Commission could give direction to have a letter written. Mr. Galloway said that it was different with a variance because the people provided notice do not have an actual interest other than it is in their neighborhood or it is close to them. In this case, we are talking about people living along that easement and having a real property interest in that easement. In reality, a Quit Claim Deed from each one of them or similar language is needed. He said if a lesser standard is something the Commission wanted, he could look into it and create a document that says they relinquish their claim for the owners to sign. He said he could not say at the moment what the document would look like. He did say it needed to have the names of the owners, a legal description of the property, and show some understanding of the fact that they are relinquishing an interest.

The Mayor said that the City did give Mr. Sylvia a building permit when they probably should not have. It has happened before and will probably happen again. He wanted the City to do what it could so Mr. Sylvia could get clear title to his house.

Commissioner Wheeler said that the Commission had the power to vacate it right now regardless of what SWFWMD or anyone else does, and he believed that there was sympathy from the Commission to that effect. Commissioner Howell said Mr. Sylvia had done what he was asked to do and it was not his fault, but now he was going to have to go door to door.

Commissioner Howell said she believed that Mr. Sylvia has done what he was asked to do a long time ago. Now, we are asking him to go from door to door. This is something that is not necessarily his fault. The City issued the permit. Ms. Delmar asked Commissioner Howell if she would want the City to require a boundary survey every time a building permit is issued. Commissioner Howell said she does not know how else the City would know what was there. Ms. Delmar said this was not a visible drainage ditch. Mr. Galloway said it was an easement. Commissioner Howell asked if the City charges people for building permits without knowing where the land is.

Mr. Moran explained that when a building permit comes in from any applicant, it is up to whoever signs and seals the drawing to say that it is true and accurate. The plat and the building drawing are not the same thing. The easement is identified on the plat, which is the official record. Commissioner Howell asked if the City looks at the plat and Mr. Moran said no.

Commissioner Wheeler said that was what the City does but it is misleading because it is not what the public thinks. Mr. Galloway said that if the City has to know where the easements are, then the City would have to compel the applicant to do a boundary survey by a certified surveyor, which would likely cost them another thousand dollars. Ms. Delmar added that it would have to be done every time.

Mr. Galloway said that what Commissioner Wheeler said was true. If at least three of the five Commissioners voted to vacate a portion of the easement for a pool otherwise located on private property, the Commission has the power to do that. From a legal standpoint, from someone who has practiced real estate laws for years, he previously stated what really needed to be accomplished.

Mayor Van Sickle said he did not dispute that, but said he sympathized with Mr. Sylvia because he may never get all of his neighbors to respond. He said that if Mr. Sylvia had signatures and the other needed information from his two closest neighbors, it would alleviate a lot of headaches as he might not be able to get any further results. Then he could bring it back to the Commission.

Commissioner Rogers asked if the only way Mr. Sylvia could sell his property would be to sue to quiet title. Mr. Galloway said that such an action cannot quiet title to a public easement. The court has no jurisdiction to do that. He acknowledged that Mr. Sylvia was in a legal limbo, but the court does not have the authority to vacate. The Commission has the authority to vacate because the easement is granted to the public. Mr. Sylvia was asked how many square feet the pool extended into the easement. He said 20 feet from the fence line, but that he was asking to push it back 4 feet. Mr. Galloway did a pencil drawing to show the Commission what was needed for a description of the portion of the easement to be vacated. He said that they needed to know how many feet in width and depth the area of the encroachment was.

Commissioner Wheeler said that he would like this problem solved as expeditiously as possible. Ms. Delmar said it could be brought back once Mr. Sylvia obtained the documentation. She added that we should not to characterize it as the City's fault. Mr. Galloway reiterated that it is not the City's fault. Commissioner Howell asked whose fault it was and Commissioner Wheeler said no one's.

The Mayor asked Mr. Galloway how long it would take for Mr. Sylvia to receive the document he is to get signed by his neighbors. He added that this has been going on for a very long time and if they took a vote, he was sure it would be positive. Commissioner Howell asked that the letter Mr. Galloway provides not be filled with legal terms that the average person would not understand. Mr. Galloway said he would need to meet with Mr. Sylvia later during the week to get the existing paperwork and then he would prepare the document.

Commissioner Howell suggested VOICE getting the signatures. Mr. Galloway was of the opinion that would be an inappropriate approach.

Mayor Van Sickle said the Commission sympathized with Mr. Sylvia. If Mr. Sylvia would meet with the attorney sometime during the week and give him the appropriate documents, the attorney would create the document for him. Then he would be able to get the neighbors' signatures from both sides of him and come back before the Commission for them to vote.

Commissioner Wheeler asked if it would be in the form of an ordinance or resolution and Mr. Galloway said it would be an ordinance.

Commissioner Howell asked if Mr. Sylvia would get clear title once he got the paperwork and signatures from his neighbors. Mr. Galloway said it was his opinion that he would not get approvals from all of his neighbors. He said the Commission is suggesting a lesser standard than what he had counseled was necessary. He cannot accomplish this within the timeframe that Commissioner Wheeler is suggesting. He said he could bring back an ordinance for first reading after he gets a description of what is to be vacated. If the consents are acquired, the ordinance can be brought back for second reading and approval. If some lesser standard is achieved in the course of that, it would be up to the Commission to decide what action to take.

Mr. Sylvia wanted to know if he only had to get the signatures of his closest two neighbors. The Mayor said the parcel on either side of the easement is public property. He would be comfortable if he got the two neighbors' approval although his other neighbors have a right to the easement. The pool has been there for over 20 years now. Commissioner Wheeler said if we just did it, they would not know anyway.

Mr. Galloway took down Mr. Sylvia's phone number and said he would give him a call. He told the Commission that he continues to be of the opinion that the signatures of his neighbors on either side were not sufficient. He believes that all the people along the easement have an interest in that easement by virtue of its dedication. It is his opinion that they all should relinquish the claim. He did not think the Commission's decision would ever come back to haunt them, but the next time someone has a similar problem they may want the same consideration, which may create a difficult precedent.

Commissioner Howell asked Mr. Sylvia to get as many signatures as he possibly could. She said to send them a letter with a return envelope in it. Mr. Galloway said that was not something he could approve. He could say that if the Commission vacates the portion of the easement where the pool lies, Mr. Sylvia will not have a title problem with his property. Beyond that, he could render no opinion. Mayor Van Sickle directed Mr. Galloway to meet with Mr. Sylvia and get the issue resolved.

CITY COMMISSION COMMENT

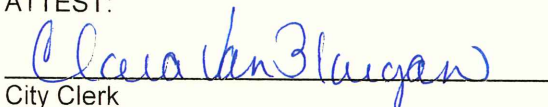
There were no comments made by the Commission.

There being no further business, the meeting was adjourned.



Mayor/Commissioner

ATTEST:



City Clerk