

The regular meeting of the Lake Wales City Commission was held on May 4, 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.

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.

MAYOR

Agenda Item 5. PROCLAMATIONS: National Music Week; May 2-9, 2010
Memorial Day, May 31, 2010
Public Works Week, May 16-22, 2010
Municipal City Clerks Week, May 2-8, 2010

Commissioner Wheeler read a proclamation proclaiming May 2 – May 9, 2010 as “National Music Week.” Anita Graham, Lake Wales Music Club, Inc. accepted the proclamation.

Mayor Van Sickle read a proclamation proclaiming May 31, 2010 as “Memorial Day.” Ed Perkins, VFW Post #2420, accepted the proclamation.

Mayor Van Sickle read a proclamation proclaiming May 16 – May 22, 2010 as “Public Works Week.” Tom Moran, Public Works Director, accepted the proclamation.

Mayor Van Sickle read a proclamation proclaiming May 2 – May 8, 2010 as “Municipal Clerks Week.” City Clerk Clara VanBlargan and Deputy City Clerk Jacquie Hawkins accepted the proclamation.

OLD BUSINESS

Agenda Item 6. Approval of Minutes: April 20, 2010, Regular Meeting

** minutes approved at end of meeting*
Agenda Item 7. Ordinance 2010-08, Firefighters' Pension Plan Amendment – 2nd Reading & Public Hearing

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Sandra Davis, Human Resources Director, and Dorothy Pendergrass, Finance Director]

SYNOPSIS

The City Commission will consider approval of proposed amendments to the Firefighters' Pension Plan that comply with SB 538 passed by the Florida Legislature.

RECOMMENDATION

Staff recommends that the City Commission adopt Ordinance 2010-08 on second reading and public hearing.

BACKGROUND

At its February meeting the Firefighters' Pension Board asked staff to bring forward Ordinance 2010-08 for adoption. The proposed plan amendment contains several changes to the retirement plan, which are addressed by ordinance sections as follows:

Section 1: Sec. 16-163. Board of Trustees

The proposed ordinance would amend Section 16-163(a), related to the make-up of the board of trustees, to increase the terms of board members from 2 to 4 years. (This change is permissible under recent changes to Chapter 175, Florida Statutes, but is not required.)

Section 2: Sec. 20-194 Finances and Fund Management

This revision would increase the maximum investment in foreign securities from 10% to not to exceed 25% of plan assets, on a market value basis. The revision is required under Chapter 2009-97 Laws of Florida. (SB 538) It also requires the board, beginning January 1, 2010 to sell, redeem, divest, or withdraw all publicly traded securities that the fund may have in "scrutinized companies" (companies that do business with countries that engage in terrorism). Divestiture must be completed no later than September 30, 2010. (These changes are mandatory.)

Section 3: Sec. 16-169. Optional Forms of Benefits

Section 16-169 (b) will clarify that a retired firefighter may change his or her designation of a joint annuitant or beneficiary up to two times without the approval of the pension board or without the approval of the prior joint annuitant or beneficiary. Further, the retiree may not be required to furnish proof of good health of the annuitant or beneficiary being removed, and the annuitant or beneficiary being removed need not be living. (This provision is mandatory).

Section 4: Sec. 16-177. Repeal or Termination of Plan

This amendment will incorporate into section 16-177 recent revisions to Chapter 175, Florida Statutes concerning the distribution of plan assets upon plan termination. The recent changes codify the decision of the 4th District Court of Appeal in the Town of Lake Park case, which held that the employer is responsible for funding any deficiency in a firefighter pension plan upon termination of the plan. The changes took effect on July 1, 2009 following passage of SB 538. (This provision is mandatory).

Section 5: Sec. 16-178. Exemption from execution; non-assignability

The proposed amendment will authorize the board of trustees to withhold funds from retirement benefits to pay for insurance premiums, i.e. health, dental or vision. (This provision is permissible under Chapter 175; though not mandatory).

OTHER OPTIONS

Do not approve the amendments

FISCAL IMPACT

According to the attached letter from Foster & Foster Inc., Plan Actuary, they have determined that adoption of Ordinance 2010-08 will have no impact on the assumptions used in determining the funding requirements of the program.

Ms. VanBlargan read ordinance 2010-08 by title only.

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, AMENDING CHAPTER 16, ARTICLE III OF THE LAKES WALES CODE, TO PROVIDE THAT THE TRUSTEES OF THE FIREFIGHTERS' PENSION PLAN AND TRUST BE IN COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA; PROVIDING FOR CODIFICATION; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

[End memo agenda]

OPENED PUBLIC HEARING

There were no comments made by the public.

CLOSED PUBLIC HEARING

Commissioner Wheeler made a motion to adopt Ordinance 2010-08 after second reading and public hearing. The motion was seconded by Commissioner Rogers.

By Voice Vote:

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

The motion carried 5-0.

Agenda Item 8. Ordinance 2010-09, Police Officers' Pension Plan Amendment – 2nd Reading & Public Hearing

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Sandra Davis, Human Resources Director, and Dorothy Pendergrass, Finance Director]

SYNOPSIS

The City Commission will consider approval of proposed amendments to the Police Officers' Pension Plan that comply with SB 538 that was passed by the Florida Legislature.

RECOMMENDATION

Staff recommends that the City Commission adopt Ordinance 2010-09 on second reading and public hearing.

BACKGROUND

At its February meeting the Police Officers' Pension Board asked staff to bring forward Ordinance 2010-09 for adoption. The proposed plan amendment contains several changes to the retirement plan, which are addressed by ordinance section as follows:

Section 1: Sec. 16-233. Board of Trustees

2010-195

The proposed ordinance would amend Section 16-233(a), related to the make-up of the board of trustees, to increase the terms of board members from 2 to 4 years. (This change is permissible under recent changes to Chapter 185, Florida Statutes, but is not required.)

Section 2: Sec. 16-234 Finances and Fund Management

This revision would increase the maximum investment in foreign securities from 10% to not to exceed 25% of plan assets, on a market value basis. The revision is required under Chapter 2009-97 Laws of Florida. (SB 538) It also requires the board, beginning January 1, 2010 to sell, redeem, divest, or withdraw all publicly traded securities the fund may have in "scrutinized companies" (companies that do business with countries that engage in terrorism). Divestiture must be completed no later than September 30, 2010. (These changes are mandatory.)

Section 3: Sec. 16-239. Optional Forms of Benefits

Section 16-239 (b) will clarify that a retired Police Officer may change his or her designation of a joint annuitant or beneficiary up to two times without the approval of the pension board or without the approval of the prior joint annuitant or beneficiary. Further, the retiree may not be required to furnish proof of good health of the annuitant or beneficiary being removed, and the annuitant or beneficiary being removed need not be living. (This provision is mandatory)

Section 4: Sec. 16-247. Repeal or Termination of Plan

This amendment will incorporate into section 16-247 recent revisions to Chapter 185, Florida Statutes concerning the distribution of plan assets upon plan termination. The recent changes codify the decision of the 4th District Court of Appeal in the Town of Lake Park case, which held that the employer is responsible for funding any deficiency in a Police Officer pension plan upon termination of the plan. The changes took effect on July 1, 2009 following passage of SB 538. (this provision is mandatory)

Section 5: Sec. 16-248. Exemption from execution; non-assignability

The proposed amendment will authorize the board of trustees to withhold funds from retirement benefits to pay for insurance premiums, i.e. health, dental or vision. (This provision is permissible under Chapter 185; though not mandatory.)

OTHER OPTIONS

Do not approve the amendments

FISCAL IMPACT

According to the attached letter from Foster & Foster Inc., Plan Actuary, they have determined that adoption of Ordinance 2010-09 will have no impact on the assumptions used in determining the funding requirements of the program.

[End memo agenda]

Ms. VanBlargan read ordinance 2010-09 by title only.

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, AMENDING CHAPTER 16, ARTICLE IV OF THE LAKES WALES CODE, TO PROVIDE THAT THE TRUSTEES OF THE MUNICIPAL POLICE OFFICERS' PENSION PLAN AND TRUST BE IN COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA; PROVIDING FOR CODIFICATION; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR

AN EFFECTIVE DATE.

OPENED PUBLIC HEARING

There were no comments made by the public.

CLOSED PUBLIC HEARING

Commissioner Wheeler made a motion to adopt Ordinance 2010-09 after second reading and public hearing. The motion was seconded by Commissioner Thornhill.

Roll Call Vote:

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

The motion carried 5-0.

CITY CLERK

**Agenda Item 9. OATH OF OFFICE: Commissioner Michael S. Carter, Seat 3
Mayor L. Jack Van Sickle**

Commissioner Michael S. Carter, Seat 3

City Clerk Clara VanBlargan administered the Oath of Office to Commissioner Michael S. Carter.

Mayor L. Jack Van Sickle

City Clerk Clara VanBlargan administered the Oath of Office to Mayor L. Jack Van Sickle.

MAYOR

Agenda Item 10. ROLL CALL

COMMISSIONERS PRESENT: Terrye Y. Howell; Michael S. Carter.; Jonathan Thornhill; John Paul Rogers; Mayor L. Jack Van Sickle.

COMMISSIONERS ABSENT: None.

Mayor Van Sickle reversed Agenda Items 12 and 11.

Agenda Item 12. AWARD OF PLAQUE: Lee Alexander Wheeler, III

Mayor Van Sickle commented that it takes more work than the general public knows to be a good Commissioner, and out of the 8 years Commissioner Wheeler served, he served as Mayor. He added that Commissioner Wheeler put his heart into his service.

Commissioner Wheeler thanked the city departments, all the City Commissioners he ever worked with, news paper reporters, and the public for all their support and input during his tenure as City Commissioner.

**Agenda Item 11. APPOINTMENT OF VICE MAYOR
2010-197**

Commissioner Thornhill made a motion to appoint Commissioner Howell as Vice Mayor. The motion was seconded by Commissioner Rogers.

Roll Call Vote:

Commissioner Thornhill	"YES"
Commissioner Rogers	"YES"
Commissioner Carter	"YES"
Commissioner Howell	"YES"
Mayor Van Sickle	"YES"

The motion carried 5-0.

CONSENT AGENDA

Agenda Item 13. Award of contract for Repairs at Depot Museum

The full staff memo is incorporated into the minutes.

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

SYNOPSIS

Staff is asking for approval to award a contract to Wildmon Construction, LLC for repairs at the Depot Museum

RECOMMENDATION

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

1. Award the contract in the amount of \$11,350 for repairs at the Depot Museum to Wildmon Construction, LLC and authorize the City Manager to execute the contract.

BACKGROUND

On February 12, 2010 Cliff Smith, the City's Building Official, discovered mold and moisture damage along an exterior portion of the southeast wall of the Depot Museum. Mr. Smith contacted American Compliance Technologies, Inc. (ACT) to perform an Indoor Air Quality survey within the building because he was concerned about the presence of mold.

ACT conducted a survey on Saturday, February 13, 2010. The results of the air sampling indicated "normal" fungal levels in the indoor environment. The results of total spore counts showed that the indoor fungal levels were considered low and not of concern at that time.

ACT outlined actions that needed to be taken to prevent further material degradation and increased fungal growth.

On March 18, 2010 staff advertised a Request for Quote soliciting quotes for the repairs to be performed at the Depot Museum. Quotes were received as follows:

Wildmon Construction, LLC	\$11,350.00
SEMCO Construction, Inc.	\$19,500.00
Alan Walters Construction	\$15,853.80.

After reviewing the quotes Mr. Smith determined that Wildmon Construction, LLC was the lowest responsive quote.

FISCAL IMPACT

The FY09'10 budget for the Depot includes \$15,000 for maintenance and repair of historic structures managed by the Lake Wales Historic Society under contract with the City. At the end of March, maintenance and repair expenses totaled \$7,666, leaving \$7,334 unexpended. An additional \$5,000 was budgeted for other miscellaneous charges and has been transferred to the maintenance and repair budget. Thus, a total of \$12,334 remains available in the Depot budget to cover the cost of the proposed repairs.

Although Mr. Wildmon's quote specifies payment terms that include a down payment and full payment within 5 days of completion, he has consented to payment terms that conform to municipal requirements as stated in the proposed contract:

Contractor shall submit an invoice for the costs of work upon completion of the work. All invoices shall describe, in detail, all work performed. City shall make payment 45 days after receipt of an acceptable invoice; provided, however, that no payments shall be due until Contractor has received a final and approved inspection by the City Building Official and the Contractor has delivered to the City complete releases of all claims of Contractor and its laborers, material men and subcontractors performing work or furnishing material hereunder, all in a form satisfactory to the City.

[End agenda memo]

Agenda Item 14. Backflow Prevention Loan Program

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Dorothy Pendergrass, Finance Director]

SYNOPSIS

Establishing a loan document and standard procedures for the Backflow Prevention Loan Program

RECOMMENDATION

It is recommended that City Commission approve the loan document and standard procedures for the Backflow Prevention Loan Program.

BACKGROUND

As discussed during the March 9, 2010 worksheet, backflow devices are required relating to access of the public water supply. Compliance with regulations from Florida Department of Environmental Protection (DEP) and also City Ordinance 21-72 have been established relating to backflow devices.

The City Commission requested that the Finance Director provide a short-term loan program for business that could not afford the installation cost of a backflow prevention device. The following are the recommended procedures:

- 1) This program is only available during the period of May 5, 2010 through September 31, 2010. After September 31, 2010, business will be required to seek traditional financing sources. The interest rate offered during this program shall be 6%, which is the statutory interest rate pursuant to Florida State Statute, Section 55.03.

- 2) During the period of May 5, 2010 through September 31, 2010, business deciding to use the Backflow Prevention Loan Program, shall obtain a written estimate for the cost of the installation of the backflow prevention device from a certified plumber.
- 3) The estimate shall be provided to the Finance Director. The Public Works Department shall review the estimate to ensure the device is in compliance with requirements and provide a written notice to the Finance Department to proceed with approval of the Loan Program.
- 4) Once approval is obtained from the Public Works Department, the Finance Department shall provide loan documents to the business owner for signature, in an amount not to exceed the estimate provided.
- 5) After signed loan documents are received, the Finance Department shall contact the plumber to proceed with installation of the backflow device, in an amount not to exceed the estimate provided. If additional costs are needed, the business owner shall be responsible for payment of the additional costs directly to the plumber.

FISCAL IMPACT

The Public Works Department estimates the average backflow prevention device costs \$600. The cost of actual device/installation will vary based on the access to public water supply which each business has. Public Works estimates there are sixty-five businesses that out of compliance and still need backflow devices as of April 26 2010.

For a one-year term, with equal monthly installments, at 6% fixed interest, on a principal balance of \$600, the City will receive \$22.80 interest income over the term of the note.

[End agenda memo]

Agenda Item 15. Award of Contract for HVAC Equipment & Controls Repair Services

The full staff memo is incorporated into the minutes.

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

SYNOPSIS

Staff is asking to approve the award of a contract for HVAC repair services to Gill's Heating & Cooling, Inc.

RECOMMENDATION

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

1. Approve the contract for HVAC Equipment & Controls Repair Services between the City of Lake Wales and Gill's Heating & Cooling, Inc. and authorize the City Manager to execute the contract.

BACKGROUND

On January 12, 2010 staff prepared a Request for Proposals for HVAC Equipment Repair and Replacement with proposals due on March 10, 2010. Proposals were received from Gill's Heating and Cooling, Garden Grove Heating and Cooling, Air Mechanical and Service Corporation and Natural Air Energy Saving Systems.

The selection committee consisting of, Jerry Brown, Fire Chief, Don Porter, Facilities Maintenance Supervisor, Tina Peak, Library Director and Dorothy Pendergrass, Finance Director met to evaluate the proposals on March 29, 2010. The criteria established to evaluate the proposals included hourly rates, parts mark-up, past performance, staffing and emergency response time. Results of the rankings are as follows:

First Ranked:	Gill's Heating and Cooling
Second Ranked:	Natural Air Energy Saving Systems
Third Ranked:	Air Mechanical and Service Corp.
Fourth Ranked:	Garden Grove Heating and Cooling.

The contract will commence on approval of the City Commission and end on September 30, 2011, with the option to renew for 2 one-year terms upon mutual agreement of both parties.

FISCAL IMPACT

HVAC repairs and replacements are budgeted in the M&R Facilities Department budgets. Hourly rates proposed by the first-ranked firm are as follows:

Hourly Rate – Straight Time:	
Mechanics	\$45.00
Helpers	\$35.00
Hourly Rate – After Hours and Weekends	
Mechanics	\$45.00
Helpers	\$35.00
Hourly Rate – Holidays	
Mechanics	\$45.00
Helpers	\$35.00
Parts Mark-up	28%
Emergency Response Time	30 minutes

Note:

A bid protest was filed by the second-ranked firm, Natural Air Energy Saving Systems relating to the way in which the selection committee members applied the evaluation factors. Upon review of the selection process, the City Manager supports the recommendation of the selection committee to award the bid to Gill's Heating and Cooling. See attached letter to Natural Air Energy Saving Systems.

[End agenda memo]

Agenda Item 16. Approval of Agreements with Kimley-Horn & Associates, Inc.

The full staff memo is incorporated into the minutes.

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

SYNOPSIS

Staff is asking for approval of two agreements with Kimley-Horn & Associates, Inc. for Environmental Engineering Services for site corrective action at Fleet Maintenance.

RECOMMENDATION

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

Approve Agreements #2 and #3 with Kimley-Horn & Associates, Inc. for Environmental Engineering Service for site corrective action at the City's Fleet Maintenance facility and authorize execution of the agreements by the City Manager.

BACKGROUND

On January 22, 2010 a hazardous waste program field inspection was conducted at the City's Fleet Maintenance facility that indicated that violations of Florida Statutes and Rules may have existed at the facility. The Florida Department of Environmental Protection (FDEP) made observations described in an inspection report. (Attached)

On February 4, 2010 staff received a letter from the FDEP advising the city of the violations. During the inspection it was observed that one drum storing used oil filters was unlabeled. Corrective action was taken immediately while FDEP was on site. Also observed was a used oil tank that was not located in secondary containment. Staff contacted Smith Bros. Oil, and a containment structure was ordered and installed within one week. Also observed was the fact that one dolly and two five-gallon buckets containing used oil were not labeled as containing used oil. This was corrected while FDEP was on site.

The violation of most concern was used oil observed on the floor and the ground surrounding the used oil tank. The wall immediately to the east of the tank had large holes that appeared to have been cut into it and the oil was observed to be draining outside and contaminating the soil. Additionally, a tank located on the Public Works property to the north of Fleet Maintenance was observed to have leaked a tar like substance on the fence and on the ground.

Upon receipt of the violation notice, staff immediately contacted Kimley-Horn & Associates, Inc. Engineering, utilizing our Master Consulting Agreement #90-173. They prepared a proposal to address the implementation of corrective actions associated with the violations. Staff from Kimley-Horn accompanied City staff to the enforcement meeting at the FDEP's Southwest District office on February 12, 2010. Staff provided photos and documentation of corrective actions that had been taken since receipt of the original violation notice. As a result of this meeting FDEP agreed to reduce the penalties from \$6,000.00 to \$4,800.00 plus \$300.00 for costs.

Kimley-Horn's first agreement, totaling \$5,955.00, generated a work plan addressing the excavation, delineation, characterization and proper disposal of the impacted soils. It also included soil sampling requirements, lab analysis and reporting to the FDEP.

Kimley-Horn's second agreement, in the amount of \$7,780.00, included soil excavation and disposal adjacent to the fleet maintenance building and beneath the tack tank. Soil was removed until there was no visible impact of used oil or tack and samples were analyzed.

During excavation activities, impacted soil was observed to extend under the existing facility along the eastern wall. The soil was left in-place to prevent structural damage to the building. Because impacted soil still remains at the site, FDEP was contacted to determine if additional site assessment conditions applies. Kimley-Horn was informed by FDEP that a groundwater well was required to be installed and sampled.

Kimley-Horn's third agreement, in the amount of \$8,950, is for the installation of one temporary groundwater well for the purpose of groundwater sample collection and analysis. Groundwater sampling will include measuring the depth of groundwater and purging the well in general accordance with FDEP Field Sampling 2200 Standard Operating Procedures for groundwater sampling. The sample will be analyzed by PEL Laboratories located in Tampa, Florida. This agreement also includes a Limited Groundwater Assessment Report which will be provided to FDEP.

All of these corrective actions need to be completed within 180 days from January 22, 2010 (by July 21, 2010) in order to meet the requirements of the Consent Order which the City will enter into with FDEP when corrective action is completed. Kimley-Horn anticipates that it will take 7-21 days to complete the field activities, receive analytical results and generate the letter report required by the State once authorization is received from the City.

The threshold for requiring approval of a contract or task agreement by the City Commission is \$10,000. In the past, any individual contract or task agreement not exceeding \$10,000 was approved administratively, regardless of the number of task agreements approved under a single Master Consulting Agreement. Only those task agreements that exceeded the threshold were approved at the Commission level.

The fee for Agreement #1 did not meet the threshold requiring Commission approval and was approved administratively. Although the fee for Agreement #2 did not meet the threshold and the work was performed in response to an emergency situation, it is staff's opinion that this agreement requires approval by the City Commission because the total fees paid for Agreement #1 and #2 exceed the \$10,000 threshold. We are requesting retroactive approval of task agreement #2.

Staff believes that Agreement #3, also under the \$10,000 threshold, requires approval by the City Commission for the reason stated above. Although this agreement has been signed, work under the agreement has been deferred until the Commission authorizes the agreement.

FISCAL IMPACT

The fee for work under Agreement #1 is \$5,955. The fee for Agreement #2 is \$7,780 and under this agreement Kimley-Horn supervised the excavation and disposal of contaminated soil, meeting the FDEP's deadline of March 29. Agreement #3, in the amount of \$8,950, covers groundwater sampling and includes the installation of a monitoring well as required by FDEP before July 21. The fees for the work under the three agreements total \$22,325.

The FY09'10 budget includes \$20,000 in the Fleet Maintenance M&R Facilities account for replacement of the temporary roof installed on the building after the 2004 hurricanes. As of this date the temporary roof is still in good condition as determined by a recent inspection by Semco Construction, who installed the temporary roof. These funds, supplemented by savings elsewhere in the department, will be used to cover the expenses incurred in correcting these violations.

[End agenda memo]

Agenda Item 17. Purchase of Polaris Ranger Utility Vehicle

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Herbert Gillis, Police Chief]

SYNOPSIS

The City Commission will consider approving the purchase of a Polaris Ranger utility vehicle.

RECOMMENDATION

Staff recommends that the City Commission:

Approve the purchase of a Polaris Ranger utility vehicle from GHC Motorsports of Lake Placid for \$11,887.00.

BACKGROUND

The Police Department is working to enhance the community policing initiative by employing new and innovative preventative patrol strategies. Since the 1990s, the Police Department has used bicycle patrols to connect law enforcement officers and the community they serve. Bicycle patrols are a great success.

Accordingly, the Police Department wants to build on this success by using a side-by-side utility vehicle in a similar method. Officers conducting bicycle patrol are limited as to the equipment they have access to in the field. In contrast, side-by-side utility vehicles have a large cargo capacity, are capable of traveling in excess of 50 miles per hour and can tow a trailer weighing 2,000 pounds. In addition, a side-by-side utility vehicle is small enough to operate in areas where police vehicles cannot. Finally, like bicycle patrol, side-by-side utility vehicles provide an opportunity for officers to interact with the community during preventative patrols and special events.

SPECIFICATIONS

Manufacturer: Polaris
Model: Ranger 800 Crew
Options: Sport Roof
Storage Cover

VENDORS

GHC Motorsports: \$11,887.00
St. Pete Motorsports: \$12,105.49
Sky Powersports: \$11,997.50

Note – Although the application of the 2% local vendor preference would result in a bid from Sky Powersports that is lower than the bid submitted by GHC Motorsports, Sky Powersports did not include the option of a storage cover as specified. When adjusted for this omission, the bid from GHC Motorsports prevails.

OTHER OPTIONS

The City Commission may choose not to purchase the Polaris Ranger utility vehicle from GHC Motorsports.

FISCAL IMPACT

This expenditure was approved by the City Commission and the CRA and is included in the 2009/2010 CRA Operating Budget.

[End agenda memo]

Agenda Item 18. Modification of the Official Traffic Map

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Herbert Gillis, Police Chief]

SYNOPSIS

The modification will change the intersection of Lakeshore Blvd. and Sunset Drive back to a two-way stop.

STAFF RECOMMENDATION

Staff recommends that the Mayor and the City Commission modify the Official Traffic Map in the following manner:

1. Establish the intersection of Lakeshore Boulevard at Sunset Drive as a two-way stop intersection and modify or remove official traffic control devices and roadway markings as required.

BACKGROUND

At the December 15, 2009 regular meeting of the City Commission, the Lake Wales Police Department was instructed to complete an inventory of the stop signs placed in the city as a traffic calming measure. After identifying and reviewing each location, the Police Department recommends that the intersection of Lake Shore Blvd. at Sunset Drive be restored to a two-way stop intersection with stop signs on Sunset and no stop signs on Lake Shore Blvd. No quantitative or qualitative data was found to justify a four-way stop intersection at this location.

With regards to the other locations which were reviewed, it is recommended the City Commission affirm their previous decisions as the stop intersections are effective measures in improving traffic safety.

OTHER OPTIONS

The Commission may choose not to make any changes to the Official Traffic Map.

FISCAL IMPACTS

None – Funding was included in the Field Operations operating budget for this purpose and the required materials are in inventory.

[End agenda memo]

Agenda Item 19. Award of contract for Electrician Services

The full staff memo is incorporated into the minutes.

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

SYNOPSIS

Staff is asking for approval of a contract for Electrician Services with Central Florida Electric, LLC.

RECOMMENDATION

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

1. Approve the contract for Electrician Services with Central Florida Electric, LLC
2. Authorize the City Manager to execute the contract.

BACKGROUND

On February 2, 2010 staff advertised a Request for Proposals for Electrician Services, with proposals due on Tuesday, February 23, 2010.

Proposals were received from Cassady & Hogan, Inc., Leedy Electric Corp., Central Florida Electric, LLC, Fletcher Electric, Inc. L.J. Rossi Electric, LLC Estes Electric, Inc., Kincaid Electric Services, Inc., and Lightsey Electric, Inc.

After the proposal were received, a bid protest was submitted from Kincaid Electric Services, Inc. questioning the "qualified, State of Florida licensed electrical contractor" requirement, the weighting of the hourly rates, and the standards of the points vs. the % of mark-up relations. Staff met with Mr. Kincaid to discuss these issues and it was decided that it was in the best interest of the City to reject all of the

proposals and issue another Request for Proposals to clarify these issues. A new Request for Proposals was issued with proposals due on April 14, 2010.

Proposals were received from Cassady & Hogan, Inc., Leedy Electric Corp., Kincaid Electrical Services, Inc., First Day, Inc., L.J. Rossi Electric, LLC, and Central Florida Electric, LLC.

Firms were evaluated on hourly rates, parts mark-up, past performance, staffing and emergency response time. Results of the rankings are as follows:

First ranked firm:	Central Florida Electric, LLC
Second ranked firm:	Leedy Electric Corp.
Third ranked firm:	Kincaid Electrical Services, Inc.
Fourth ranked firm:	First Day, Inc.

No bid protest was submitted in relation to the second Request for Proposals.

The contract will commence upon approval of the City Commission and end on September 30, 2011, with the option to renew for Two (2), One-year terms upon mutual agreement of both parties.

FISCAL IMPACT

Electrical repairs are budgeted in M&R Facilities department budgets.
Hourly rates are as follows:

One Licensed Electrician Contractor Hourly Rate:	\$45.00
One Licensed Electrician Contractor plus Helper:	\$70
After Hours Emergency Hourly Rate:	\$45
Parts Mark-up	10%
Emergency Response Time	30 minutes
Local Vendor	Yes

[End agenda memo]

Agenda Item 20. Letter of Understanding for Winslow's Pointe Project

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Harold Gallup, Economic Development Director]

SYNOPSIS

The City Commission will consider approval of a letter to Alico Land Development relating to provision of future utility services for the Winslow's Pointe Project to be located south of the city limits on Highway 27.

RECOMMENDATION

Staff recommends that the City Commission take the following action:

1. Authorize the City Manager to send the attached letter confirming intent to discuss services for the Winslow's Pointe project at some time in the future and to discuss a Development Agreement to be brought back to the Commission at the appropriate time for some future action.

BACKGROUND

At the April 13, 2010 Commission Workshop an overview of the Winslow's Pointe project was presented for review. Discussed at the workshop was the request from Alico Land Development for a letter

confirming the City's intent to engage in future discussion for utilities service for the project based upon additional review and some formation of a Development Agreement between the two parties. At that time, staff received direction to bring back an appropriate letter for Commission review. A copy of the intended letter is attached

OPTIONS

Do not authorize the City Manager to engage in discussions with developers of the Project.

FISCAL IMPACT

None at this time

[End agenda memo]

END CONSENT AGENDA

Commissioner Carter discussed Agenda Item 15, Award of Contract for HVAC Equipment & Controls Repair Services. He noted that the mark up for parts on the quote for Gills Heating and Cooling was 28% and on the other quotes it was only 10%. Bonnie Hodge, Purchasing Agent, said that they were graded on a number of criteria and explained the bidding process with the weight each criteria was given. She said that Gills parts quote was higher but when weighed against the other criteria; they still had the lowest overall bid. Commissioner Carter asked if, after receiving the bid and seeing that Gills' bid for parts was higher, the City could have negotiated that portion down. City Attorney Chuck Galloway said that once the bids are open, they are binding and you can't renegotiate.

Commissioner Carter discussed Agenda Item 17, Purchase of Polaris Ranger Utility Vehicle. He questioned the need for the purchase of a \$12,000 vehicle when the City had so many other important needs the money could be spent on like open sewers and the gymnasium repairs. Police Chief Herb Gillis said that this purchase was budgeted from CRA funds for community policing of the historic downtown area and Lincoln Avenue for use by the bicycle patrol. He explained the need of a smaller, more maneuverable vehicle that can carry equipment and supplies needed by the patrol, as well as used during large gatherings in the historic downtown are for things like parades. Commissioner Carter asked how they presently moved the equipment and was told they used an old vehicle that was not as maneuverable. Ms. Delmar explained that CRA funds cannot be used for things like the gym maintenance and sewer repairs.

Mayor Van Sickle commended Chief Gillis for the bids presented in their packet and said they were easier for the Commissioners to understand as all the required criteria were the same for each bid. Commissioner Thornhill agreed.

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 Rogers	"YES"
Commissioner Carter	"YES"
Mayor Van Sickle	"YES"

The motion carried 5-0.

NEW BUSINESS

Agenda Item 21. Ordinance 2010-10, Establishing a Chapter 17.5, Special Assessment, in the Lake Wales Code of Ordinances – 1st Reading

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Dorothy Pendergrass, Finance Director]

SYNOPSIS

Establishing of a Chapter 17.5, Special Assessment in the Lake Wales Code of Ordinances and authorizing establishment of a Street Lighting Assessment Program.

RECOMMENDATION

It is recommended that the City Commission, after first reading, approve Ordinance 2010-10, establishing Chapter 17.5, Special Assessments and establishing a Street Lighting Assessment Program.

BACKGROUND

City staff is expecting a petition requesting the creation of a Street Lighting District for the Brookshire subdivision for the purpose of creating a street lighting assessment relating to the existing decorative street lighting infrastructure lease and maintenance costs. The Brookshire Home Owners Association, over the last two years, has had difficulty collecting sufficient funds to pay for street lighting costs.

The style and placement of the street lights within the Brookshire subdivision was controlled by the developer and the Brookshire Home Owners Association and in no way was mandated by the City of Lake Wales. The developer chose to lease the street lights within the Brookshire subdivision from Progress Energy instead of purchasing and transferring Brookshire street lighting infrastructure to the City. Normally, the developer would be responsible for paying all cost to install street lights within a subdivision. The cost of the decorative street lighting lease within a subdivision would not normally be paid by the City.

Normally, for publicly owned roads within a subdivision the City would pay the energy costs only, as the developer is responsible for installing the infrastructure. The Brookshire roads were transferred to the City, but the street lighting infrastructure was not transferred to the City because it was leased instead of purchased. A separate agenda items will be prepared relating to the issue of the street lighting energy costs for the Brookshire subdivision once the issue relating to the infrastructure lease is settled as the power company is not able to separate the billing of the infrastructure lease and the energy costs.

The issue of leased street lighting infrastructure within a subdivision on public streets is an unusual circumstance for the City of Lake Wales. The decision of continually leasing the infrastructure or purchasing street lighting within the Brookshire subdivision would be a decision and negotiation between the developer and/or Brookshire Home Owners Association and Progress Energy. City staff is not aware any discussion of this nature at this time.

In order to proceed with consideration of a proposed Street Lighting Assessment Program, adoption of the following items is needed:

- 1) **Street Lighting Assessment Ordinance** (first reading 5/04/10, with second reading and public hearing scheduled for 5/18/10) If Ordinance 2010-10 is adopted after second reading and public hearing, an Initial Assessment Resolution would be presented immediately thereafter on 5/18/10 ; and

- 2) **Initial Street Lighting Assessment Resolution** (scheduled for 5/18/10). This resolution will establish the tentative (not to exceed) assessment rates, and, if adopted, each property owner will be mailed a notice of the tentative assessment.
 - a) Requires one time publication of the resolutions (scheduled for 6/02/10) F.S. 170.05
 - b) Requires notice of the time and place of the Final Resolution in two publications (scheduled 6/16/10 and 6/23/10) F.S. 170.07.
 - c) Requires 30 day written notice to property owners within the assessment area. (scheduled for mailing on 6/01/10) F.S. 170.07;
- 3) **Resolution for Uniformed Collection Method** (scheduled for 7/6/10). F.S. 197.3632
 - a) Required four publications (scheduled June 2nd, 9th, 16th and 23rd.);
 - b) Required to be mailed to County Property Appraiser and Tax Collector before 1/01/11 for inclusion on ad valorem tax bill for fiscal year 2011/2012. (If adopted, city staff will perform internal bill for the last quarter of fiscal year 09/10 and annual billing for fiscal year 10/11); and
- 4) **Final Street Lighting Assessment Resolution** (scheduled for 7/06/10). This resolution will establish the final assessment rates that will determine the assessment placed on each property owner's parcel.

FISCAL IMPACT

N/A

[End agenda memo]

Ms. VanBlargan read Ordinance 2010-10 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, FLORIDA, ESTABLISHING CHAPTER 17.5, SPECIAL ASSESSMENTS; ESTABLISHING ARTICLE I, STREET LIGHTING ASSESSMENTS; DEFINING TERMS RELATING TO THE STREET LIGHTING ASSESSMENT PROGRAM; PROVIDING FOR INTERPRETATION; PROVIDING GENERAL FINDINGS; PROVIDING LEGISLATIVE DETERMINATION OF STREET LIGHTING SPECIAL BENEFIT TO PROPERTY; PROVIDING GENERAL AUTHORITY FOR IMPOSITION OF STREET LIGHTING ASSESSMENTS; ESTABLISHING INITIAL PROCEEDINGS FOR IMPOSITION OF STREET LIGHTING ASSESSMENTS; PROVIDING FOR THE INITIAL ASSESSMENT ROLL; PROVIDING FOR NOTICE BY PUBLICATION AND NOTICE BY MAIL; PROVIDING FOR ADOPTION OF THE FINAL ASSESSMENT RESOLUTION; PROVIDING FOR EFFECT OF FINAL ASSESSMENT RESOLUTION; PROVIDING A PROCESS FOR ADOPTION OF ANNUAL ASSESSMENT RESOLUTION; PROVIDING FOR A LIEN ON ASSESSED PROPERTY; PROVIDING FOR REVISIONS TO STREET LIGHTING SPECIAL ASSESSMENTS; PROVIDING FOR IMMATERIALITY OF PROCEDURAL IRREGULARITIES; PROVIDING FOR CORRECTION OF ERRORS AND OMISSIONS; PROVIDING FOR INTERIM ASSESSMENTS; PROVIDING FOR A METHOD OF COLLECTION; PROVIDING FOR ALTERNATIVE METHODS OF COLLECTION; PROVIDING FOR COLLECTION FROM GOVERNMENT PROPERTY; PROVIDING FOR APPLICABILITY; PROVIDING THAT METHODS IN CHAPTER 17.5 ARE ALTERNATIVE AND ADDITIONAL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Commissioner Rogers spoke in opposition of the proposed ordinance saying that the City should not be in collection business for homeowners because if you do it for one, you would have to do it for others. He gave Lake Ashton as an example of a community that also had decorative lights, but we could not collect for them because of its CDD status. He also said that if the homeowners don't pay, the City can file a lien against their property, but if the property forecloses the debt is wiped out and the City would lose out. City Attorney Chuck Galloway said the money goes on the homeowner's tax bill which over-rides a mortgage, and can't be defeated by a mortgage foreclosure action. Commissioner Rogers said he still did not think the City should be collecting and said the City had a hard enough time collecting water bills.

Commissioner Howell agreed with Commissioner Rogers that this would lead to more neighborhoods wanting the City to do likewise which would put the City in a bind. She did not know how much it would cost the City to help this development and others in the future, and suggested maybe her neighborhood would want to get in on it.

Finance Director Dorothy Pendergrass agreed that it was not the City's problem in regards to the lease and explained that the developer leased the upgraded lights from Progress Energy instead of purchasing them outright. She explained that the City, who normally pays for power usage through the gas tax if the streets are dedicated to the City, tried to get Progress Energy to divide the bill, sending the homeowners just the cost of the leased poles, and sending the City the bill for the power usage. But Progress Energy said it could not separate them. The solution the City came up with was to set up a lighting district so that the City could be billed for the total cost, pay Progress Energy monthly for the power usage, but adding each homeowner's share of the light pole lease to their annual tax bill as an assessment. She said this solution will be more expensive for the homeowner because they would also have to pay administrative costs. Any other community in similar circumstances as Brookshire, that had a financial need, could have this option if the majority of residents sign a petition to do so, and it was approved by the Commission, after determining a valid reason.

Ms. Delmar said there would be no public cost as the homeowner would have to cover the City's time and expense. She said the difference between the Brookshire and Lake Ashton circumstances is that Brookshire's streets are dedicated and Lake Ashton's are owned by the CDD. She said a lot of cities use this vehicle instead of leaving it up to the homeowners to pay the bill because street lighting is a safety issue and not an amenity. She said the option of doing nothing would cause a dangerous situation as Brookshire's lights would be turned off, increasing the possibility of crime. The City's participation would avoid policing problems. She added that the homeowners bought the houses in good faith, and the lights were included in the homeowner's assessment but because of the economy, there aren't enough homeowners to pay the fees to cover the bill.

Commissioner Howell asked, if the leased lights were what were causing the trouble, if new developments were going to be told they can't get the fancy leased lights. Planning Director Margaret Swanson said the code requires the developer to purchase the lights and install them instead of leasing them. She didn't know if Brookshire came in before the code regulation or if it slipped in unnoticed.

Commissioner Carter asked what would happen if the City did nothing and what the other options were. Ms. Pendergrass said Brookshire's lights would be turned off and the only other option would be to try and negotiate with Progress Energy. Ms. Delmar added that the City's involvement was an action of last resort. Mr. Gallup said the homeowners would have to enter into litigation with the developer and that 22 lots are in litigation now. He added that the lights are back on, but only temporarily.

Commissioner Carter said that if the homeowners default on their taxes because their home is in foreclosure the City won't get paid. The City Attorney said the City would get paid because the tax certificates are bought by investors and eventually the City gets its money. There would not be a tax default and the City is covered. Commissioner Carter said the City was setting a precedent. Mr. Galloway said it would not be setting a precedent because the City Code says they should have been purchased, and we will have to make sure they are purchased in the future. If the developer wants to install a nicer pole it becomes the developer's problem. This time, this developer, instead of paying for them, leased them and stuck the homeowners with the cost. He added that if the subdivision had built-out, this never would have happened because there would have been enough owners to cover the expense. The problem was that the poles and the power usage were set up on the same bill and could not be separated. Ms. Delmar said this was a unique circumstance where you have public streets but private lights.

Commissioner Carter said he wanted to make sure all the City fees would be covered. Ms. Pendergrass said that if the assessment needs to be increased, which the Finance Department would know because it gets all the bills, they can make adjustments. She would do a mailing out to the residents to let them know the assessment would be increased and that they have the right to petition or come before the

Commission. She wanted to make clear that what the City would be doing would not correct the underlining problem because forty years from now those people will still be paying for those light poles. Any discussion with that problem would not be the City's responsibility but would be between Brookshire and Progress Energy.

Commissioner Thornhill said he was in favor of this item for the following points.

- Because of the safety issue
- Because the City is responsible for the energy costs for those lights
- Because the homeowners themselves did not know about the cost until after the fact
- Because this can't come up with just any neighborhood who decides they would rather have the assessment and because it would need to go through a petition process
- Because collection costs are included

Commissioner Thornhill asked what would happen if homeowners negotiate or change the light pole lease after the assessment was in place. Ms. Pendergrass said if there ever was a change they could do an adjustment or even a refund because it is always based on the actual cost associated with it. It would be kept in a separate fund and would be restricted money. And if the homeowner's association decided it wanted to discontinue and pay on their own, a majority of homeowners just have to sign another petition. Commissioner Howell asked if, say in two years, the development is built-out, and there are enough homeowners to now pay for it out of their fees, could they. Ms. Delmar said yes, and that it would be in their best interest to do that because the City would be adding in those extra fees.

Commissioner Rogers said that the real-estate laws require developers to disclose to homeowners all the fees and so he believed the homeowners knew exactly what they got into. If the developer did not disclose it, he is subject to lawsuits. He said the City should not get involved and if we get between the homeowner and developer, we would be the loser. Ms. Delmar said there is no way of knowing what the developer told the homeowners about the lights, but there is written record that he told them the City was responsible for paying the bill, which is what started the discussion with the former City manager.

Mayor Van Sickle said for clarification, Lake Ashton also had decorative poles that were leased and not purchased and they are public streets yet they pay for their own electricity. He said that he had been contacted by residents who learned that the gas tax pays for the lighting on public streets and wanted to know why they had to pay for their lights. He said he understood what the City was trying to do, but that we were setting precedence. Ms. Delmar said that the difference between Brookshire and Lake Ashton roads is that, though public, Lake Ashton roads have not been dedicated to the City and therefore are not listed as lane-miles and do not get the gas tax for them. Brookshire roads are dedicated and listed.

Commissioner Thornhill made a motion to approve Ordinance 2010-10 after first reading. Commissioner Howell seconded the motion.

Roll Call Vote:

Commissioner Thornhill	"YES"
Commissioner Howell	"YES"
Commissioner Carter	"YES"
Commissioner Rogers	"NO"
Mayor Van Sickle	"YES"

The motion carried 4-1.

Agenda Item 22. Resolution 2010-09, Highway Maintenance Agreement with the Florida Department of Transportation

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Teresa Allen, Public Service Administrator]

SYNOPSIS

The City Commission will consider approving Resolution 2010-09 to continue the highway maintenance for certain State Road Rights Ways with the Florida Department of Transportation for an additional three (3) year period for an annual compensation of \$39,359.35.

RECOMMENDATION

Staff recommends that the City Commission take the following actions:

1. Approve Resolution 2010-09 authorizing an agreement between the City of Lake Wales and the Florida Department of Transportation for maintenance of certain State Road Rights-of-Way.
2. Authorize the Mayor to execute the agreement.

BACKGROUND

The City of Lake Wales and the State of Florida Department of Transportation have entered into agreements to maintain rights-of-way on portions of US27, SR60 and SR17 (Alt. 27) within the jurisdictional limits of the City since the early nineties.

At its meeting on April 20, 2010 the City Commission approved the agreement with the Florida Department of Transportation to continue highway maintenance for certain State Road Rights-of-Way for an addition three (3) year period. This approval referenced Resolution 2007-08 that was signed by Mayor Manry; however, because the resolution needs to reflect the signature of the City's current mayor, Resolution 2007-08 cannot be used to continue this agreement.

Resolution 2010-09 authorizes the City's current mayor to renew the agreement for an additional three (3) years with an annual compensation of \$39,359.35.

FISCAL IMPACT

If we do not renew the agreement, the maintenance budget will be funded by City funds and we will lose annual compensation of \$39,359.35.

OTHER OPTIONS

Do not enter into the agreement

[End agenda memo]

Ms. VanBlargan read Resolution 2010-09 by title only.

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY AN AGREEMENT BETWEEN THE CITY OF LAKE WALES AND THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION INCLUDING ANY AMMENDMENT THERETO FOR THE MAINTENANCE OF CERTAIN STATE ROAD RIGHTS OF WAY.

Ms. Delmar explained that this resolution was to redo a past action at the last meeting. FDOT realized that the resolution we were extending was signed by a former mayor, so they wanted the City to redo the resolution so it would get signed by the current Mayor.

Commissioner Howell made a motion to approve Resolution 2010-09. The motion was seconded by Commissioner Rogers.

Roll Call Vote:

Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Commissioner Carter	"YES"
Commissioner Thornhill	"YES"
Mayor Van Sickle	"YES"

The motion carried 5-0.

Agenda Item 23. Resolution 2010-13, Correcting Resolution 2010-08, Master Joint Participation Agreement 2010-A

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Teresa Allen, Public Services Administrator]

SYNOPSIS

The City Commission will consider approving Resolution 2010-13 which corrects an error in the FM Number (Financial Management Number) in Resolution 2010-08, Master Joint Participation Agreement 2010-A.

RECOMMENDATION

Staff recommends that the City Commission approve the following action:

1. Approve Resolution 200-13, Correcting Resolution 2010-08, Master Joint Participation Agreement 2010-A.

BACKGROUND

At its meeting on April 6, 2010, the City Commission approved Resolution 2010-08, Master Joint Participation Agreement 2010-A with the Florida Department of Transportation (FDOT).

The Florida Department of Transportation noticed that they had provided the City with an incorrect FM Number (Financial Management Number) for the Improvements to Runway 17-35 Safety Area. Resolution 2010-13 corrects this error.

FISCAL IMPACT

There is no fiscal impact. The funding and share for the City, FAA and FDOT remain the same for the project as shown below.

The City's match for the taxiway lights project is \$7,972.00

Federal (FAA) share is \$302,953.00

FDOT share is \$7,972.00

09/10 budget

MITL's(Medium Intensity Taxiway Lights (construction phase)	\$318,897.00
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The City's match for runway 17-35 improvements is \$20,000.00

FDOT share is \$80,000.00

10/11 budget

Improve Runway 17-35 safety areas to standards and remark pavement	\$100,000.00
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OTHER OPTIONS

None

[End agenda memo]

Ms. VanBlargan read Resolution 2010-13 by title only.

A RESOLUTION OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA AUTHORIZING THE EXECUTION OF A MASTER JOINT PARTICIPATION AGREEMENT (JPA), ITEM-SEGMENT-PHASE-SEQUENCE NUMBER (FINANCIAL MANAGEMENT NUMBER): 426177 1 94 01 (REHABILITATE MEDIUM INTENSITY TAXIWAY LIGHTING SYSTEM AND MARK TAXIWAYS "A", "B", AND "C"); 427981 1 94 01 (IMPROVE RUNWAY 17-35 SAFETY AREAS TO STANDARDS AND REMARK PAVEMENT) WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION TO ALLOW THEIR PARTICIPATION IN MULTIPLE AVIATION PROJECTS AT THE LAKE WALES MUNICIPAL AIRPORT.

Ms. Delmar said that this was a redo request from FDOT. They inadvertently transposed some numbers in a financial management number that was supplied for Resolution 2010-08. This is being readopted at their request.

Commissioner Rogers made a motion to approve the Resolution 2010-13. The motion was seconded by Commissioner Howell.

Roll Call Vote:

Commissioner Rogers	"YES"
Commissioner Howell	"YES"
Commissioner Carter	"YES"
Commissioner Thornhill	"YES"
Mayor Van Sickle	"YES"

The motion carried 5-0.

Agenda Item 24. White Paper on Southside Elevated Water Storage Tank

Mr. Gallup reviewed Agenda Item 24. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Harold Gallup, Economic Development Director]

SYNOPSIS

White Paper on Southside Elevated Water Storage Tank

There are two central questions concerning the subject project.

2010-214

The First Question: Was there a need for a 500,000 gallon elevated storage tank for the area it is constructed in and the timing of the project as it relates to development that was actively in the planning and predevelopment process? This addresses the issue of commitments by the City to supply a level of service as required by contract and covenant to the property owners, both current and future, of the City.

The Second Question: What was the scope of services requested of and provided by the professionals retained by the City for the project and the administration of the contract(s).

The merits of both questions and the overall impact of them to the City's current position on the project and recommendations are the sole content of this White Paper.

DEFINING THE PROBLEMS

The First Question addresses need within two distinct time frames.

The First Time Frame deals with the existence and needs of a City project called Longleaf Business Park (LLBP). This project is an essential element of expanding and balancing the economic future of the City. It started in 1999 and is still being developed today. The LLBP is a business/commerce center that will represent over a million square feet of industrial, manufacturing, distribution, research, and office space when fully developed. This provides a level of municipal services that are required to meet various levels of code, development standards, mortgage standards, and public health, safety and welfare standards in a competitive marketplace.

The provision of a municipal water service, in both the domestic potable water and fire suppression service levels, is considered a critical element in any development plan in the eyes of the business, site consultant, financial marketplace, and the City's own development standards.

The Elevated Storage Tank Project had been on a Capital Improvements Schedule, unfunded but planned, since before 1999 as part of the Utilities System Expansion. The need became more critical as the development of LLBP commenced with the expenditure of public funds for the infrastructure and the financial commitment of private funding that is linked to all of the above- ground capital investment that has been made and that will be made over the ensuing years.

The Second Time Frame accelerated as residential growth began in the service area and, more particularly, as the negotiations and pending development of the Mayfair Development began to take place. This development by contract committed the City to provide a level of water service in both quality and quantity that made moving the water tower project forward essential as the south side of the City was seeing pent up development pressures becoming a reality. This time frame is pre-hurricane with the project becoming an engineering item in post-hurricane 2006. The search for a site, the availability of a good site within the economics of this project combined with others that had been on a CIP sheet for over a decade were solved with the acquisition of property on Hunt Brothers Road.

In defining the problem and answering the First Question on need and timing the answer has to be yes and does not require protracted debate.

The Second Question goes to more complex subsets of issues. The issues surrounding the services requested and provided by the professionals retained by the City for the Elevated Storage Tank Project and the administration of the contracts offer more complex responses and recommendations for action. The Project has had pertinent data reviewed, alternative solutions evaluated, selection of what is considered the "Best Alternative" for resolution of the problem, recommendations for implementation and recommendations for follow-up to insure completion.

The following represent some key dates in the evaluation:

- January 04, 2006 Boyle Contract for Task Order # 15 for the Elevated Storage Tank Project
- 2010-215

- March 07, 2007 Boyle Task Order # 15 Amendment #1
- July 18, 2008 Contract with Phoenix Fabricators and Erectors
- February 07, 2008 DEP issues a Permit and construction is released
- May 20, 2009 Partial Release by DEP
- June 23, 2009 Full Release by DEP—City Accepts Tank
- June & July 2009 Testing of Tank by City—Problem is encountered on functionality of Tank—City Staff
- August 2009—City Staff request Boyle (now AECOM) to assist in the Operating Scenario Review
- October 2009 –November 2009—City Staff reviewing operational options and testing the tank. During this period additional review was conducted by various engineers and regulatory agencies.
- October 2009 –City's new Director of Public Works institutes a PAT Process (Process Action Team) to evaluate the data available and look at solutions and possible costs.
- November 2009 dialogue with AECOM increases Engineering firm is not willing to go forward with any more effort as they feel they have completed their obligations
- January 2010- City has meeting with AECOM to discuss "substantive issues on history of project"
- January—March 2010 City is having agency discussions on project elements and review of the PAT recommendations. A copy of this has been given to City Commission before and is attached a part of this document for inclusion in any actions and resolutions of the problem(s)
- March 2010 – meeting with AECOM to review Water Model Program in Orlando
- April 2010-Last meeting with AECOM representative and City representative
- May 2010—City Commission

The following are the subset questions as referred to earlier in this document.

It is given that the tank was a necessity and is not discussed here in this section.

There have been questions regarding the purpose of the tank. The purpose of the tank is to provide storage for domestic and fire flow for LLBP and development underway and planned for the south side of the City.

There was a question as to whether the elevated tank is the best design versus other, i.e. electric water storage systems. The city's utilities director at the time, Johnny Windsor, was of the strong position that the City had maintained an adequate water supply system after the hurricane in 2004 when other cities suffered from lack of a system because we had a "gravity stand pipe system" that kept the system pressurized in the aftermath of the hurricanes. That was a position embraced by the city utility staff and management and resulted in moving forward with the project.

The question of the construction height difference of 15 feet seems to not have had the impact on performance as earlier expected. The City approved the design at the new height based upon options given to city staff by the consulting engineer. The "demand" for flow has a controlling influence on how the tank operates versus the height in this particular instance. The site for this particular tank underwent numerous iterations with the last site being determined the best of the available choices.

The City's engineering consultant was very familiar with the city's utility system as they were the consultants for the Master Plan for the Sewer and Water System and advised on corrective action and new construction. Was the city staff fully engaged with the consultant on the Master Plan contract and its subsets issues? There is the indication that the utility staff was engaged with the consulting engineers on this issue. All of the data for the utilities system was controlled by the consultant and was the basis of the analysis for the water tower.

Did the criteria for the design and construction of the water tower change in the near-term due to demand in the area? The answer for this is yes.

Did the project undergo some form of value engineering? The answer appears to be yes with the modification of Task Order # 15 and several of the project tasks being taken in-house under the administration of the then Director of Utilities and the approval of the then City Manager.

In the process, that contained in Task Order # 15 and as amended, did the engineers apprise the Director of Utilities and City Management that the tank was not going to work as designed? The answer appears to be yes as the then City's Utility Director, and subsequent then Director for the Department on the project, responded that they would find a way to make it work as they have operated the impacted parts of the utility system, new and old, manually before and could continue to do so with this project until the demand changed. It was further indicated that the City could operate the tank at 50% of capacity and under manual conditions.

There is a strong indication that the final approvals from DEP-Department of Health obtained by the consulting engineering firm were tainted with some misrepresentation(s) that the tank and line system did function as designed and there is no water quality problem. That is not the case and that is why we are here at this time. We have to operate the tank manually, and if we do not there are two points of water stagnation in the system that does not meet the DEP-Department of Health criteria for certification.

Does it appear from the files and conversations that the City was engaged in the process and the management of the Project? Yes. Does it appear that the Value Engineering—Cost Savings Modification to Task Order 15 and extension of a contract for other work played a part in this current situation? (An example of this is the elimination of a chlorine contact chamber to address the water quality issues in the tank after it has stayed inert for long periods of time. The engineers were told the system did not need it.) The answer would be yes. Does it appear that the management of the consultant and the assumption of work to be handled by the then city staff have played a role in the current situation? The answer would have to be yes.

RECOMMENDATIONS / SOLUTIONS / OPTIONS

The City's new Director of Public Works has prepared and reviewed with staff and other professional a PAT Report for corrective actions.

The following are the options for consideration:

1. Do nothing. Operate the system by manually. Wait for increased demand and the project will be assumed to work as originally intended. The cost here is staff time and demand on staff time that is already at a point of being dysfunctional due to excess demand of time on certain personnel. This injects a 'human error' factor that we would prefer to eliminate.
2. Work with the DEP-Department of Health on the PAT recommendations to insure they concur with the conceptual modification for correction and insure any issues with the City over this project are resolved.
3. Authorize the moving forward with staff-recommended solutions based upon the following:
 - a. Review and acceptance of the City's conceptual solution by DEP-Department of Health
 - b. Authorization of the necessary work to be done by an engineer working beside the current Director of Public Works for the solution to the tank and stagnation of water in the line that connects to the Grove Avenue Water Line. The engineering firm to be reviewed and selected by the Director of Public Works and approved by the City Commission in accordance with city policy.
 - c. Provision of appropriate oversight by the Public Works Director to insure a successful resolution to the current problem and provide the longer term solutions that will allow the

system to be adjusted as market demands return for development that the tank will serve.

[End agenda memo]

Mayor Van Sickle said he was not as concerned with whether the tank is needed as he was about staff giving directions to go against the recommendation of the engineer, putting the City in a very bad light, and making us financially liable for at least a million dollars for something that does not work.

Harold Gallup, Economic Development Director, reviewed the memo including: evaluation dates; design issues and options; input from consultant and professionals; the stagnant water problem; and solutions, corrective actions and modifications to consider.

Commissioner Rogers clarified that Ms. Delmar only inherited this problem. He asked the following questions:

- **What the justification was for authorizing the building of something the engineer said would not work:** Mr. Gallup said there were a lot of meetings involved but not a lot of oversight. There were red flags that were missed by the Utilities Director at the time, then the subsequent Utilities Director, and the past administration. Mistakes were made by the statements; if we build it, we'll operate it manually as we did before, and the system will correct itself.
- **Who had the ultimate responsibility of deciding to build or not build the storage tank:** Mr. Gallup said that it was the Utilities Director of the time, then the subsequent Utilities Director, and the past administration. Commissioner Rogers said that would be past City Manager Tony Otte and Mr. Gallup said yes.
- **Who the main contact with GAI for this project was:** Mr. Gallup said it was not GAI but Boyles Engineering.
- **What the qualifications were for a Utilities Director on this project:** Ms. Delmar said there was no requirement in the job description at that time for a Utility Director to be an engineer. That requirement was added with the City's search for a Public Works Director.
- **If the City oversaw the consultants work adequately:** Mr. Gallup said that, based on the review that the Public Works Director did, there were lapses in regards to administration.
- **If there were periodic meetings and who the City representative was that consulted with the engineer and contractor:** Mr. Gallup said there were meetings and that Johnny Windsor, Ray Creel, and Tony Otte were the City representatives.
- **If the City was told it needed a chlorine system on the tank so as not to contaminate our water system:** Mr. Gallup said that the early recommendation was to have a contact chlorine chamber as part of the system and it was taken out by the Director of Utilities who said they would find a way around it with a cost savings. Commissioner Rogers said that the City then built a water tank with disregard to public health and he asked who made the decision. Mr. Gallup said the Utilities Director and former City Manager approved the modification of the design plans that eliminated the chlorine chamber recommendation by the engineering firm. Commissioner Rogers pointed out that the present City Manager, Judy Delmar, had nothing to do with this.
- **If the firm told the City it would be in error if it proceeded:** Mr. Gallup said yes, and the City told them to delete it from the package.

Commissioner Rogers said that he did not understand why we would build something when the engineer and contractor said it wouldn't work, and then decide you can work it at 50% capacity. He said the City's

investment in the project is \$3.5 million dollars and he could not rationalize putting the City into that kind of debt for something that would not work. He said he thought a pump and generator could have been used to move the water needed for about \$300,000 and asked Mr. Gallup if that sounded correct. Mr. Gallup said pumps had been one consideration but the decision of the City had been to go with the gravity system based on the effects of the hurricanes in 2004. He said that \$300,000 sounded right for the pump and generator but, neither he nor Mr. Moran could speak about the design.

- **What the period of time was:** Mr. Gallup said Jan 2006 to June or July 2009, which was the testing phase when the problem surfaced and was identified by the Utilities Department. Commissioner Rogers commented that without additional money, the plant is totally useless. Mr. Gallup said the design of the system was not constructed to be operated manually but that Tom Moran and his team have come up with alternatives and modifications that would make the system viable. As demands grow, it can be kept on an automotive path with minor adjustments.
- **He questioned the 75 pounds of pressure in the main line and only 62 pounds at the end and said that the water will run uphill:** Mr. Moran said the water does not run uphill it is pushed uphill because 62 pounds can't override 75 pounds of pressure.
- **If that was because the tower was 15 feet too short:** Mr. Moran said no.
- **What it would take to correct the problem:** Mr. Moran said they could change some of the piping and valve configuration, and explained what that would do and how it would help.
- **If the only thing that could stop the stagnant water problem was the chlorine chamber:** Mr. Moran said that was one method and explained that the requirement was a 50% turn-over every three days, which cannot be done. Commissioner Rogers asked if that is why they manually have to dump the water and Mr. Moran said that they dumped at least twice, but that right now the tank was empty.
- **If water was put in the tank and it was not dumped, if we would have a problem:** Mr. Moran said yes.
- **If our problem was in leadership because the consultants and engineers said it would not work and staff should have asked them what would make it work.** Mr. Moran said that could have been one of the problems and they could also have gone to a different consultant or engineer for a second opinion. Commissioner Rogers said that if they did not have confidence in their engineers and consultants they should have gone to another one.
- **If Mr. Otte had the supreme authority over this project:** Mr. Gallup said the recommendations came up from staff but Mr. Otte made the final decision.

Commissioner Howell said that basically the consultant gave an opinion and the engineer said they could make it work and we have been operating on a manual basis. Mr. Gallup said the project was not in operation at all and the Utilities Director at that time recommended operating manually. Commissioner Howell asked if what we need now is a system that will work automatically and Mr. Gallup said yes. Commissioner Howell said the problem has gone on since June or July of 2009 and the three people named were Windsor, Creel, Otte, plus Mr. Gallup himself as he was part of that committee, Ms. Delmar, and the City Attorney, as he must have had to read something that was legal, knew that this was a piecemeal job. Right now the questions are: How are we going to fix this? How are we going to get it to work automatically?

Commissioner Thornhill asked if the Commission had been aware of the engineer and consultant information so they had the opportunity to say they did not want to go with the manual option when it was brought before the Commission to approve the money to do the work. Mr. Gallup said the agenda item submitted by John Windsor said that the tank would be run automatically, as originally designed.

Commissioner Thornhill said that sometimes it comes down to if the Commission is asking the right questions. He added that the work was budgeted to correct the problem and we are ready to move forward. He asked if there were any fines involved and Mr. Gallup said there were no fines because the system was not activated. Commissioner Thornhill asked how much had been saved by not doing what the engineer recommended. Mr. Gallup said it went in as a design build project which created other issues but he could not say what the exact savings were.

Commissioner Carter asked what needed to be done to make sure that this does not happen again. Mr. Gallup said we now have a Florida licensed and registered Engineer as head of Public Works, who has the expertise to look at plans in a purely engineering aspect and can make decisions based on understanding the consultant and engineer language and asking the right questions. Commissioner Carter asked if this would not have happened if we had a licensed engineer at the time because something terrible went wrong and something significant fell through the cracks. There were a lot of people involved, including the City Commission if money was involved. Mr. Gallup said that getting an engineer on staff was a major step and controlling the consultant is paramount. He added that communication had been weak but staff is now more engaged. Procedures have been set up by Mr. Moran and the City Manager to close the gap. It isn't fool proof, but we have a better system today. Commissioner Carter said if we have to do a 50% turnover every three days we are just dumping out water. Mr. Moran said initially they did but the system now is empty. Commissioner Carter asked if there was bonding with the engineering firm or construction firm because we chose to ignore the engineer's recommendation. The City Attorney said he did not know that there was any bonding for the project and Mr. Gallup concurred. Commissioner Carter said we created our own problem.

Mayor Van Sickle asked if PRV in option two means Pressure Release Valve and Mr. Moran said it means Pressure Reduce Valve. The Mayor commented that you don't always have to be an engineer to be the Program Manager but they do need to communicate with the engineers, ask the right questions, and make smart decisions. He said the City shot itself in the foot and now it has to dig itself out. According to the packet, it will cost \$50,000 in materials to fix this and yet he did not see in the quote that it included the chlorination tank. He asked what the total cost would be and Mr. Moran said approximately \$200,000 for materials, labor, engineering, permitting etc. He said he would not know for sure until it went out for bid. Mayor Van Sickle said this was a prime example of what not to do on programs. The Utilities Department covers most of the City's big projects so we have to have that project management oversight.

Ms. Delmar stated for the record that in the same way that the City Commission relied on the City Manager Tony Otte for information to make their decision regarding the tank, the City Manager relied on the Utility Director. She added that she did not believe for one minute, nor did she think the City Commission should, that Mr. Otte understood the engineers that were advising against this tank. It was not in his character to accept that kind of liability for the City.

Mayor Van Sickle said that he was not implying that, but it was obvious that the Utility Director knew there were problems because when Tony left, he immediately resigned. He said we have to fix the problem and fix it right the first time because we just wasted a quarter of a million dollars fixing something we could have used for something else. We can't afford to continue doing that.

Mr. Moran said that in the proposal it says that the Commission would approve the selection of the engineer and asked if they wished him to go out for a proposal for engineering. The Mayor, speaking for himself, said we did do an evaluation of engineers and picked an engineering firm so we need to continue working with them. It will have to come back to the Commission for dollar amount approval. The other Commissioners concurred. Ms. Delmar added that it would add 45 days to the process if we have to negotiate again for a different firm.

Commissioner Rogers said for the record that according to his research, in no way had City Manager Judy Delmar been involved with decision making in the water tower, or City Attorney Chuck Galloway.

Agenda Item 25. Resolution of Outstanding Billings for Work Performed without Proper Authorization Prior to July 1, 2009

Mr. Gallup reviewed Agenda Item 25. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Harold Gallup, Economic Development Director]

SYNOPSIS

There exists outstanding billings from the subject firm based upon past administration's direction to proceed with work that did not have the appropriate authorization for said work. The period of time covered is from the summer of 2008 to summer 2009. The work was stopped but outstanding costs exist that this agenda item addresses.

RECOMMENDATION:

Staff recommends that the City Commission take the following actions on this Agenda Item:

1. Authorize payment of \$66,990.66 to GAI for the completed work reviewed and accepted by staff.
2. Authorize staff to renegotiate the scope of work to finish the tasks underway by GAI to be completed at a cost not to exceed \$48,110.25 and to have the appropriate purchase orders issued for the tasks.
3. Reaffirm GAI as the engineer of record for the CDBG Commercial Revitalization Grant work currently underway and authorize the expenditure from CBDG grant administration funds in the amount not to exceed \$33,160 overseeing and inspecting work performed under the grant.
4. Authorize an amendment to the GAI contract to revise the Scope of Services for the Downtown Streetscape CDBG Project to include a redesign of the Downtown Landscaping project to incorporate, to the extent possible, staff recommendations and public comments at a maximum cost of \$9,930.
5. Require a letter from GAI confirming that payments authorized in motions 1 and 2, are recognized as full compensation for the work with no future demands of the City by GAI.

BACKGROUND

The issues that surround this agenda item involve a significant amount of work done on a number of projects that was not formally approved by the City Commission and performed without issuance of a Purchase Order Number. The work product seemed to evolve from the original contract with GAI which "piggy-backed" a Haines City contract for engineering services with Hartman and Associates, later to become GAI, Inc. The Haines City contract language did allow "piggy-backing" to occur; however, the original scope of work authorized by the piggy-backed contract was surpassed and the work performed for Lake Wales was clearly outside the original approval. The work was done with direct or implied approval given by the management of the Utilities Department and the City Manager. Ultimately, when the problem was red flagged, the direction was given to stop the work until further notice. There were discussions between the City and GAI about what work was or was not going to be paid. The events that followed with the change of management left the items we are dealing with today. The Planning Department, Public Works, and Economic Development have spent a considerable amount of time reviewing the work billings for a number of projects underway and have identified the work product that we are recommending to be paid. There are a number of Projects that are in a partial state of completion. City staff has secured some additional write-offs or negotiated values based upon the work product's value to the City.

The attached Task List with the amounts listed represents the work product that staff has reviewed and confirms that, even under the circumstances, invoices in the amount of \$66,990.66 should be paid. This cost is divided between the Planning Department and Department of Utilities as stated here. On Invoices 2028507 and 2029098 the amount for Planning is \$25,827.73 and the amount for Public Works is \$41,162.93.

This leaves Task Work, as numbered on the Exhibit that is partially complete and needs to be completed. There needs to be refined scopes of work and a clear line of communications established between the Department managing the project and the Engineering Firm. The estimated value for the residual work is \$48,110.25 with \$38,468.25 in Planning work and \$9,642.00 in Utilities work.

The firm is also the engineer of record for the CDBG Projects we are working on under the Commercial Revitalization Grant; more specifically, the Parking Lot on Lincoln Avenue, the Main Street Landscape Plan, and the Street Lighting Project for Lincoln Ave. The firm needs to be reaffirmed as the engineer of record for the CDBG Projects, responsible for overseeing and inspection work performed under the grant. The amount of CDBG work is not to exceed \$33,160 and will be paid from the grant administrative allowance.

In addition, it is necessary to authorize an amendment to the Scope of Services for the Downtown Streetscape CDBG Project for a "Redesign" Task to include, to the extent possible, recommendations and public comments related to the "Preliminary Design" used to secure that portion of the grant funding. The Redesign shall conform to the overall CDBG project approval and reaffirms the design contract with GAI for this task at a maximum expenditure of \$9,930. This redesign work will be paid from CRA funds allocated for revitalization of downtown area.

FISCAL IMPACT

The total amount to settle the invoices involved in this settlement is as follows:

ALL INVOICES	UT FUND UTILITIES	GEN FUND PLANNING	TOTAL
WORK COMPLETED	\$41,162.93	\$25,827.73	\$66,990.66
REVISED TASK ORDERS	\$9,642.00	\$38,468.25	\$48,110.25
TOTAL	\$50,804.93	\$64,295.98	\$115,100.91

While the payment of invoices for work completed in 2008 and 2009 must be paid in full during this fiscal year, some of the payment for task orders to be revised and continued will be made in the next fiscal year.

REVISED TASK ORDERS	UT FUND	GEN FUND	TOTAL
FY09'10	3,856.80	15,387.30	19,244.10
FY10'11	5,785.20	23,080.95	28,866.15
TOTAL	\$9,642.00	\$38,468.25	\$48,110.25

The total amount to be paid is allocated between fiscal years as follows:

ALL INVOICES	UT FUND	GEN FUND	TOTAL
FY09'10	\$45,019.73	\$41,215.03	86,234.76
FY10'11	5,785.20	23,080.95	28,866.15
TOTAL	\$50,804.93	\$64,295.98	\$115,100.91

PAYMENTS DUE IN FY09'10

The \$45,019.73 due from the Utilities Fund will be funded by deferring the Southside System Upgrades project until FY10'11. Deferring this project will free up \$100,000 to cover the payment of these invoices.

The \$41,215.03 due from the General Fund will be available because Building Permit Fees have been coming in substantially above projections. We budgeted a total of \$160,500 in permit fees, which is an average of \$13,375 per month; however, the actual average monthly permit receipts have been \$17,915 – excluding the \$84,041 received from our large commercial projects; i.e., Kohl's, ABC Liquor, Race Trac, Dollar General, Toppers and the Adult Day Care Center. This increase in receipts will allow us to amend our revenue projection for Building Permit fees from the original budget of \$160,500 to \$300,000.

The adopted expenditure budget for the Building Permits & Inspections Department is \$236,750. The shortfall between budgeted permit fees and budgeted department expenditures is \$76,250. This shortfall is subsidized by other unrelated General Fund revenues. The increase in permit fee revenues will mean that the Building Dept will fund its own operations in FY09'10, freeing up the General Fund subsidy (\$76,750) for other uses, i.e., payment of the GAI invoices (\$41,215.03).

OTHER OPTIONS

Do not authorize the above requested actions and give Staff new direction.

[End agenda memo]

Harold Gallup, Economic Development, reviewed the agenda item including the background, fiscal impact, options and recommendations.

Commissioner Rogers asked the following:

- **Who the main contact person was at the City:** Mr. Gallup responded that it was the then Director of Utilities.
- **Who approved the work:** Mr. Gallup gave an example illustrating that the City talks to one engineer who then consults with another, who in turn consults with another until there may be five engineers within the firm sending in the bills for their time. A simple request for the firm to take a look at something, in time turned into a very large project. Unbridled control accounted for some of the expenditures:
- **Who controlled the consultants:** Mr. Gallup said the then Director of Utilities and the City Manager. Mr. Hartman was the lead engineer, who was a very strong, persuasive, self-assured engineer with high qualifications and a vision of what was best for the City of Lake Wales.
- **What the period of time was:** Mr. Gallup said it was between September of 2008 and late summer of 2009. The change of management and the resignation of department heads brought this to the surface.
- **What the dollar amount was for the unauthorized expenditures:** Mr. Gallup said \$115,000 in work product, and for defined and accepted work that needs to be finished to complete the project.
- **If unauthorized expenditures meant that the City Commission had not approved the expenditures, or that that staff authorized the expenditures they had no authority to do:** Mr. Gallup said unauthorized expenditures means that there are no existing purchase orders for the work. The Commission was never presented with the numbers.
- **Where the City stands legally if there were no purchase orders; do we have to pay them:** Mr. Gallup said the product was generated, we received it, and authorization was implied to the

company. With the change of management, when asked who would pay the bills, they said it was not our problem. Commissioner Rogers said it sounded like children saying, "I didn't do it". He asked who did do it. Mr. Gallup said the work was permitted, authorized, or allowed by the Utilities Director and ultimately the City Manager.

- **If the City had recourse when a City employee spends money when he is not authorized; can we collect that money from the employee:** Mr. Galloway said they could if the employee was spending money on something that was not of public benefit. But, in this instance you have public benefit, with things asked for, provided, accepted and incorporated in the plans. Part of it we received and part of it we need. There have been negotiations to write some of it off. Commissioner Rogers said that there was then no criminal intent and Mr. Galloway said he did not think you could establish anything criminal with it at all. He didn't think you could get anything for civil liability either, and even if you could, your practical concern would be what they have that you could take. You can't take their home or their income. He often tells his clients that he can get a piece of paper that says they are owed money, which they already know, but they would be throwing away additional money in the process. Commissioner Rogers said that this was to be considered a learning process for the City.

Ms. Delmar said they now have procedures to prevent it from happening again. Engineers are told they are not to proceed without a Task Order and any additional work over the \$10,000 mark for the same engineering firm would require Commission approval. The reason is that in the Task Order it has to be explained how the bill would be paid in the fiscal impact statement. The Commissioners will approve or disapprove and we will know where we stand. This got out of hand because many of the task orders fell below the \$10,000 level and did not require Commission approval. The City Manager was authorized to make that commitment. If you have a number of task orders below that threshold it does not take long to add up.

Mayor Van Sickle asked if she thought that it was the intent to keep task orders below the \$10,000 bar so it would circumvent the system. Ms. Delmar said she had not seen all the original task orders but she knew that this happened in the past.

Commissioner Rogers said he believed in paying an honest debt so we are stuck with this bill. But, he wanted to see some safeguards put in so this cannot happen again. The City is dealing with taxpayer's money so we have an obligation and a duty to safeguard it to the best of our ability. He planned on doing his best and he asked that commissioners and City staff to get this straightened out. He added that it is a shame when faith and trust are put on an individual and that trust is betrayed, and that he was truly sorry that something like this came up. Ms. Delmar said that taking this action to make these recommended authorizations would solve the problem and that safeguards are now in place to keep it from happening again.

Commissioner Carter asked if the unauthorized work was necessary to successfully bring the project to a close. Mr. Moran said that some of the work was good work and should have been done. Other parts were okay but not totally correct. Commissioner Carter asked what the work consisted of and Mr. Moran said survey work, waterline extensions, documentation for the water use permit, master water plan, and capital improvement plan. The Commissioner said that these were small items and asked if in his opinion they were necessary for bringing the project to completion. He asked how much of the \$115,000 was, in Mr. Moran's opinion, work that needed to be done for the completion of the project. Ms. Delmar said that there were a number of different projects and Mr. Gallup added that there were hundreds of projects that were needed to be completed to fulfill other obligations. Commissioner Carter said this item has two issues lumped into one agenda item; authorization for payment of completed but unauthorized work; and authorization for work still needing to be done. That was confirmed. He said it sounded like we needed to pay it. Ms. Delmar said the problem is that this was not budgeted so we will have to come up with the money.

Commissioner Thornhill said that this was why we couldn't build a pool. If we have to pay out money that was not budgeted we never will have the money. It's this kind of thing that makes us look like country bumpkins throughout the county. We have to stop the waste. He said he was thankful for the procedures now in place to keep it from happening again, like keeping things right under the dollar amounts so they don't have to come to the Commission. He said this Commission talked to the City Manager and she knows the direction they want to take. Mr. Gallup said that now, if the architectural contract is for \$7,000 and the next one comes in at \$5,000, cumulatively it is now over the \$10,000 mark and has to come to the Commission. Ms. Delmar added that the fiscal impact statement is needed because it justifies where the money is coming from to pay that bill.

Mayor Van Sickle asked the citizens to buy at Kohls and ABC near Lowes, and buy gas at Racetrac, because they pulled us out of the fire on this. Ms. Delmar said they in fact did. Mayor Van Sickle said he is glad they are trying to get this under control because he has seen how creative people can get on task orders on keeping expenditures down so no one notices, and they do grow. He said this is what he was saying a year ago and though he could not prove it, staff did.

Commissioner Rogers made a motion to approve Agenda Item 25, 1-5, authorizing the payment for completed work, authorizing renegotiations for completing the work, reaffirming GAI as the engineer or record, authorizing an amendment for the Downtown Streetscape, and requiring a letter from GAI confirming full compensation for the work. The motion was seconded by Commissioner Thornhill.

By Roll Call:

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

The motion carried 5-0.

Agenda Item 26. Regulations Pertaining to Wine and Beer Bars

Police Chief Gillis reviewed Agenda Item 26. The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Herbert Gillis, Police Chief]

SYNOPSIS

The City Commission will Review the Regulations Pertaining to Wine and Beer Bars

RECOMMENDATION

It is recommended that the City Commission review the regulations pertaining to wine and beer bars and take one of the following actions:

1. affirm current public policy by making no change to the ordinance pertaining to wine and beer bars;

OR

2. create new public policy in this matter by directing staff to prepare an ordinance to limit or prohibit the operation of wine and beer bars in the future.

BACKGROUND

On October 20, 2009, the City Commission amended Chapter 23, Zoning, Land Use and Development Regulation, Lake Wales Code of Ordinances, to allow wine and beer bars within certain locations. In addition, Chapter 5, Alcoholic Beverages, was amended to remove prohibitive language.

When considering the amendments, the City Commission clearly indicated the prevailing concern was the reduction of alcohol abuse and the preservation of peace within the city. Accordingly, the City Commission declared it would revisit the regulations if the establishment of wine and beer bars created public nuisances.

The establishment of a wine and beer bar on Lincoln Avenue has created a public nuisance. Prior to the establishment of the wine and beer bar, the business district located on Lincoln Avenue generally closed by 10 p.m. Accordingly, persons were not allowed to loiter in the closed business district, and calls for law enforcement services were greatly reduced. This standard is applied uniformly to all business districts located within the city.

To advance the goal of commercial revitalization on Lincoln Avenue, the Lake Wales Police Department implemented a community policing initiative. An important objective of the Community Oriented Policing Section (COPS) is to remove crime and disorder from Lincoln Avenue. Progress toward achieving this objective, however, slowed once the wine and beer bar opened on Lincoln Avenue. Progress has been hampered just as the recently approved plan to construct medical offices will begin the revitalization of Lincoln Avenue.

The crime and disorder occurring on Lincoln Avenue is directly related to the wine and beer bar. Since the establishment is authorized to operate from 8 a.m. to 2 a.m. of the following day, the presence of large crowds loitering in and around Lincoln Avenue has resumed. These crowds have resulted in citizen complaints related to loud music, disturbances, fights and violent offenses such as shootings. Although no known crime and disorder has originated from within the wine and beer bar itself, its existence provides a lawful reason for individuals or crowds to loiter along Lincoln Avenue.

It is the opinion of the Chief of Police that additional establishments in close proximity to the wine and beer bar currently operating on Lincoln Avenue will increase alcohol abuse, disturb the public peace and create new public nuisances. This opinion is based on current citizen complaints about the increase in crime and disorder on Lincoln Avenue and calls for service originating in and around this wine and beer bar.

OPTIONS

To reduce alcohol abuse and to preserve the public peace, the following alternatives for action are presented to the City Commission for discussion:

1. Currently section 5-4, Lake Wales Code of Ordinances, provides that alcoholic beverages may be consumed, permitted to be served, served or sold at a wine and beer bar between the hours of 8 a.m. and 2 a.m. of the following day. The City Commission could reduce the hours from 10 a.m. to 10 p.m. The change in hours would affect all existing and future wine and beer bars.
2. To prevent a large concentration of wine and beer bars in a single area, the City Commission could amend Chapter 23, Zoning, Land Use and Development Regulation, to provide no wine and beer bar could be located within 2,500 feet of the real property of another wine and beer bar. This location restriction would only pertain to wine and beer bars not currently existing.
3. The City Commission could amend Chapter 23, Zoning, Land Use and Development Regulation, and Chapter 5, Alcoholic Beverages, Lake Wales Code of Ordinances, to prohibit wine and beer bars within the city. This prohibition would eliminate the opening of new wine and beer bars within the city but would not affect those currently existing.

4. The City Commission could affirm current public policy in this matter and take no action to amend Chapter 23, Zoning, Land Use and Development Regulation, and/or Chapter 5, Alcoholic Beverages, Lake Wales Code of Ordinances. This option would potentially facilitate an expansion of the problem currently experienced on Lincoln Avenue.

FISCAL IMPACTS

This action will not require an expenditure of funds.

[End agenda memo]

Police Chief Gillis reviewed Agenda Item 26 including problems caused by existing wine and beer bars and options.

Mayor Van Sickle said that when they approved the opening of these establishments he made the statement that we could try it and if there were problems we could address it again. He said the city is short-handed and there is a lot that the police are asked to do. He recommended option three which would delete the creation of any additional wine and beer bars. He said he, and probably all the Commissioners, received a phone call from a lady on D Street who said she was crouched on the floor in fear because of gun fire. Though they did not find any signs of bullets at her house, there was a lot of shooting in the neighborhood, and he said that no one should have to be scared in their own homes. If it takes shutting down the bars we should do it. If it takes additional patrols to make people feel safe, we will have to find the money to do that. He also recommended limiting the hours to a reasonable time as right now it goes to 2:00 a.m. which are the hours causing the most problems.

City Attorney Chuck Galloway interjected that under the law the Commission can control the time of service. He said that under police power, there certainly is a way to create a legal ordinance that changes the closing time from 2 a.m. to 12 a.m. which was his recommendation because it was a first bite at the problem that would not impact many of the existing establishments. He said that would be a start for the solution to this problem and would take two readings before the Commission.

Commissioner Carter said he agreed with taking small bites to solve the problem but questioned making the decision without citizen input. He thought they needed to hear what citizens had to say first. He asked if they were being asked to choose one of the four options and Ms. Delmar and Mr. Galloway explained that it required an ordinance that would be brought back for first reading, and then second reading and a public hearing at the following meeting.

Commissioner Thornhill said he had also suggested bringing this item back if it caused a problem, but he guessed they should have looked into the wine and beer bar going in a residential area; he added that he surely would not want it in his neighborhood. He said if it had been in the downtown commercial area it may not have been an issue. He didn't think we wanted to conflict with the restaurants and asked when they close. Chief Gillis said that most of the restaurants close at midnight but there is one, the All Star Grill, which is located on State Road 60 East. Commissioner Thornhill said that basically they would be putting the closing time back to where it had been. He added that he has not heard any alcohol complaints from the restaurants and asked if the problem was only in the one area. Chief Gillis said there were problems with DeCosey's, but not citizen complaints because it was located in the historic downtown with a buffer between them and residents. The problem with the wine and beer bar on Lincoln Avenue stems from it being within 50 feet of a private residence. Commissioner Thornhill said he didn't want to limit legitimate restaurants and the Mayor said that restaurants have a different type license. Chief Gillis explained that there are three uses in the Code: Retail, Restaurants, and Wine and Beer Bars. Ms. Delmar asked if by changing the hours for the wine and beer bars, we would be changing the times for the restaurants as well and she was told it would not. Commissioner Thornhill asked if there were any other complaints against other wine and beer bars other than on Lincoln Avenue. Chief Gillis said there were only two of them, the one on Lincoln Avenue, which has had complaints as to the noise and crowds, and the other, Waves, in Historic Downtown, which has had no problem. Commissioner Thornhill said that

he had approved the wine and beer establishment in order to be more business friendly but, though he had good intentions, he thinks he needs to give more thought to it.

Commissioner Howell said she was glad for the better schedule because of the loud music during sleeping hours and is not for having more bars opened. She said she hopes that police continues to enforce the noise ordinance. She said right now she was not in favor of extra bars. If people want to drink they can drink in their homes if the bars are closed. She said that closing at midnight is fine, but what would the police do about all the people loitering outside the building in the neighborhood because you can't send a grown person home. Commissioner Howell asked if, because it is a business district, and though the police can't send them home when the businesses are closed, you could send them away from the area. Chief Gillis said yes and explained that in the business district, when everything is closed, if the police see a person or groups of persons there, the police can find out their intent and purpose for being in a closed business district, and if they have no reasonable purpose for being there, for example cleaning services often operate when businesses are closed, they are asked to move along. He said that everyone enjoyed the peace and quiet for so long because there was nothing open on Lincoln Avenue. But now that there is a wine and beer bar there it has given people a reason, or at least a claimed reason, for being there. There are sometimes 300 persons out there, either in the club or on the street and there is concern with vandalism of property, which they have seen. Commissioner Howell said that the problem then with the beer and wine club is not those inside his establishment but those that hang around outside because the club is there. She said that even before the club was there, they had problems with loud music. It has been better but she knows that every summer it gets worse. She said that even if the bars are closed at 12 a.m., and even if we allow no more bars to open, there will have to be better control of the noise. She said the police need to also deal with people selling alcohol from their homes and opening clubs at their residence, so that we are not just picking on this one establishment. Once you move them from Lincoln Avenue after that one closes, they will just move somewhere else and there still will be a large volume of people. All these areas need to be established so people have a place they can go, but move on when it closes. She added that she would be happy to give the people who call her to complain all hours of the night, the other Commissioners' phone numbers if they like. Chief Gillis said that at one of the houses selling illegal alcohol, the third one they had to deal with in two years, they had a stabbing and a shooting. He said they called in the property owner to explain that they could charge him and arrest him for maintaining that nuisance and for negligence. He added that almost overnight that problem disappeared.

Commissioner Rogers suggested contacting some of the owners of the establishments to see what they thought was fair for he did not want to keep someone from making a living if he has the proper license. The Mayor commented that it was not their intent of the Commission to harm businesses, but when people start shooting guns, someone will be killed which can't be tolerated.

Mayor Van Sickle said he believed staff had the direction the Commission wished them to go and asked for them to bring it back the next meeting.

Ms. Delmar said, to make sure, she wanted to verify that staff was to bring back an ordinance reducing the hours for wine and beer. Mayor Van Sickle said that the ordinance would also include Option 3, prohibiting new wine and beer establishments. The Mayor verified and said it would not limit anyone from opening up a restaurant, serving food and alcohol, but maybe it would stop the gathering of the younger group and the problems it causes in neighborhoods.

Commissioner Howell added that rules needed to be established so people know that music is too loud for a certain time at night as right now they may not know they are breaking the noise ordinance.

Economic Development Director Harold Gallup said there was one more recommendation to consider; a different kind of format to allow the stemming of issuing any new establishment for a number of days, for instance 90 days, to give staff time to review the high density residential and commercial land-use patterns that are adjacent to each other, those that are fostering these problems. Ms. Delmar said this goes back to the Mayors original suggestion that we do a zoning in progress.

Mayor Van Sickle said that the plans for the Grand Hotel are now complete and more likely we will have a restaurant in it that serves alcohol. Then there is a place on the 10th floor where you can sit on the veranda and have a drink overlooking Lake Wales. Mr. Gallup said the wine and beer bar will be on the second terrace, with an open-air European flair, but the building will also have a high rise residential component. There is concern with members of the community with the issue of alcohol and residences budding up against each other. He is asking for time to evaluate expanded use within commercial areas because as the downtown area grows you will find more people coming in wanting a fine bar.

The Mayor said he did not have a problem with something like that, but he wants to nip the issue on Lincoln Avenue now. He said he heard there are several people wanting to open up clubs on Lincoln Avenue and he said we need to stop that from happening. Mr. Gallup said that with the Zoning in Progress, they would be stopping any new bars from going in anywhere, which would allow staff time to form new policies to address the issues.

The Mayor asked how they could write an ordinance that would only limit the hours in the residential areas and not in the commercial downtown area, and would allow for it to be changed again. Mr. Galloway said there were two different issues. One was to limit the time, which will be a separate ordinance. The Zoning in Progress would serve to allow for time to formulate the best approach, and would do the same thing as the Mayor wanted accomplished, a complete elimination. It's the same timeframe issue because you would need two ordinance readings anyway. Ms. Delmar said there would be two ordinances, one changing the hours, which can be changed again when a new zoning scheme is adopted; and the Zoning in Progress to allow time for Planning and Zoning and Economic Development to work on a eliminating the problem.

Planning and Zoning Director Margaret Swanson suggested doing an ordinance saying no more wine and beer bars, which would eliminate the need for a Zoning in Progress, with the idea that they would come back. Chief Gillis suggested removing the provision that allows for additional wine and beer bars, and addressing the hour limitation in the same ordinance. Then as the projects come in that Mr. Gallup is talking about, he could bring something back. That way it would not impede Mr. Gallup's project but would answer the concerns of the citizens. Mr. Galloway said that doing it that way would allow for a greater period of time, and at some point, something will be brought back that is progressive and beneficial to the community that you want to see in a reasonable timeframe.

Mayor Van Sickle asked if any of the Commissioners had objections to that and there were none.

Agenda Item 27. Discussion of Preliminary Financial Statements for March 31, 2010, Fiscal Year to Date

Ms. Delmar reviewed Agenda Item 27. The full staff memo is incorporated into the minutes.

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

SYNOPSIS

The preliminary financial statements report revenues received and expenditures made through the end of March 2010. Revenues were slightly ahead of target in the General and somewhat behind in the Utility Fund. Expenditures in both these major budgets were under budget.

The unaudited financial statements for the City of Lake Wales for the Period Ending March 31, 2010 are presented to the City Commission for review. At the end of March, the City was 50% into the fiscal year. Thirteen of twenty-six payrolls (50%) have been expensed through March 31. Revenue and expenditure budgets have been adjusted to reflect changes through Budget Amendment #2.

SUMMARY

The following chart gives a brief summary of overall operating revenue and expenditure performance as of March 31, 2010. Capital expense funded by CRA bond or loan proceeds is excluded from the analysis:

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SUMMARY

The following chart gives a brief summary of overall operating revenue and expenditure performance as of March 31, 2010. Capital expense funded by CRA bond or loan proceeds is excluded from the analysis:

Fund	Budgeted	Actual at 3/31	Target at 3/31	Actual at 3/31 Over (Under) Target	Over (Under) as percentage of target
General					
Revenues ¹	\$10,839,648	\$6,718,788	\$6,511,420	\$207,368	+1.9%
Expenditures ³	\$11,159,391	\$5,348,071	\$5,579,696	(\$231,625)	-2.1%
Special Revenue					
Revenues ¹	\$4,795,650	\$3,308,065	\$3,851,886	(\$543,821)	-11.3%
Expenditures ³	\$3,230,413	\$1,137,544	\$1,615,207	(\$477,663)	-14.8%
Debt Service					
Revenues ³	\$2,363,120	\$1,189,296	\$1,181,560	\$7,736	+0.3%
Expenditures ²	\$2,363,120	\$1,617,440	\$1,617,440	\$0	+0.0%
Utilities					
Revenues ¹	\$6,608,450	\$3,172,910	\$3,444,371	(\$271,461)	-4.1%
Expenditures ³	\$7,014,814	\$2,610,008	\$3,507,407	(\$897,399)	-12.8%
Airport					
Revenues ³	\$107,193	\$37,187	\$53,597	(\$16,410)	-15.3%
Expenditures ³	\$107,193	\$54,328	\$53,597	\$732	+0.7%

¹ Revenue target = prior year performance at same point in fiscal year

² Expenditure target for Debt Service Fund = actual YTD expenditure because we are paying off debt in accordance with set schedules

³ Target = 1/12 of budgeted amount multiplied by the number of months since the start of the fiscal year (October 1); i.e. at the end of March we are 6/12 or 50% into the fiscal year. This method assumes a relatively even distribution of expense or revenue from month to month.

In general, most operating revenues are about where we would expect them to be at the halfway point in the fiscal year with the exception that utilities revenues are still lagging.

Revenues from water and sewer charges at the end of March 2010 were \$174,573 behind where they were in March 2009 (water, -\$187,155; sewer, +\$12,582). If we use 50% of the fiscal year as the target level, however, water revenues were \$182,858 under target and sewer revenues were \$24,392 under target. This is a combined shortfall of \$207,250 compared to the budget. Operating expenditures were

running behind target at the end of March. Excluding capital outlay and debt service, Utility Fund expenditures were 4.5% or \$174,653 below the target level.

Operating expenditures in the General Fund are running 2.1% behind target (-\$231,625) despite the fact that payroll is still slightly skewed in relation to budget because of the 1% lump sum increase for employees that was paid out in December. Operating expenditures in the other Funds are running behind target levels except that Airport expenditures are running slightly ahead of target (+\$732).

The City has not borrowed any money from the Pool/Tax Anticipation Investment Account. The balance at the end of FY 07'08 when the account was created and the current balance are as follows:

	9/30/08	3/31/10	Difference
Pool/Tax Anticipation Investment Account	\$1,037,852	\$1,049,760	\$11,908

The City's overall cash position at the end of March 2010 increased over the cash position at the end of March 2009 (+\$1,242,602). In order to make a more accurate comparison, the following adjustments are made:

	3/31/09	3/31/10	Difference
Total Cash & Investments	6,748,888	7,991,490	+1,242,602
Due to Other Governments	(120,660)	(703,983)	
Deferred Revenues*	(411,200)	(407,068)	
Cash & Investments Net of Adjustments	6,217,028	6,880,439	+663,411

* reflected in cash but restricted to a specific future expenditure (grant project, tree replacement fund, etc), at which time revenue will be recognized

After excluding cash that was collected on behalf of other governments and deferred revenues, the City's overall cash position at the end of March 2010 was \$663,411 higher than its March 2009 level.

In comparison to total cash and investments at February 28 of \$6,838,229 the March cash and investments position increased by only \$42,210. A decrease or minor increase is not unusual with the slow-down of ad valorem tax revenues at this time of year. Between December 1 and December 31, the City received \$3,511,706 in ad valorem taxes and \$994,855 in CRA tax increment revenues from the County. In March, revenues from ad valorem taxes totaled \$110,030.

[End agenda memo]

Commissioner Carter asked what the impact was on the deferrals. Mr. Moran said that one of them was to install a fire hydrant and close the loop on a waterline. He added that it was not necessary but was a good thing to do, and the same with the other projects.

Mayor Van Sickle said that we were still looking for three million dollars for sewer treatment upgrades, and for low cost loans and asked where we were on that. Ms. Delmar said that we are on the funding list for SRF. They are waiting for us to complete bidding on the construction costs before they allocate the funds. How far we are on the lists depends on when we get those cost estimates, which staff is working on.

Finance Director Dorothy Pendergrass said that when the bids come in and are presented to the Commission, she would also present interim financing. She explained that in-between the gap when the utilities department is ready to build and begin construction and when the funds are actually ready, which could be three or four years, there will be a need for interim financing. She said she would bring information on the financial institution rates to the City Commission at that time.

Mayor Van Sickle said he was concerned with the addition of more debt because we also have the issue of the possible five million dollar sewer replacement while facing a major shortfall of funds this year. Ms. Pendergrass said that when projects come before the Commission requiring financing, she will tell the City Commission at the same time the effects of the financing. She does not want to get Commission approval to go forward with projects and then several months later tell the Commission how it will be financed. The Commission needs to make that decision based on both the benefits and the impact of how it will be paid. Ms. Delmar reminded them that the mentioned project was really three projects; the Crooked Lake lift-station project that DEP recommends, the rehab of the treatment plant that we really have to do, and the expansion of the treatment plant that maybe we really don't have to do right now. We may be able to opt out of some of that cost even though it has been approved by SRF, because we don't have to accept it. Those things are under evaluation right now with our current engineer reviewing the plans to make sure we are dealing with what we think we are dealing with. It still will not be final yet in that regard.

Ms. Delmar added that the City's cash position at the end of March is approximately \$660,000 better than it was at the end of March 2009, and reported that we still have not had to spend any of the pool money.

CITY MANAGER'S REPORT

City Commission Tracking Report

Ms. Delmar said there were no changes to the tracking report but announced that there would be a community cleanup Saturday on Druid Circle, meeting at 8 a.m. on Linden Lane, and encouraged everyone to participate.

Commissioner Carter asked how an item gets listed on the tracking report because the gymnasium was not on it even though it was an open item. Ms. Delmar said the gym was a budgetary item. She said the tracking report was started by the former City Manager to keep track of things brought up at Commission Meetings to make sure they were done. Everyone knows the work needs to be done on the gym, but the work can't begin until money is found in the budget. She said it could be added if he wished.

Mayor Van Sickle said that Commissioner Carter is correct that we do not have a list of issues such as the gym work and the water tower. Commissioner Carter added that there is no way for a citizen to learn the current status of these type projects. He suggested expanding the scope of the tracking report to include this and Commissioner Howell suggested having a future project list. Commissioner Carter said in time it would be a past project list also because the old ones would not be removed. Ms. Delmar said they have a future project list that is put in the Commission mailboxes once a month for ongoing projects that are already budgeted, so they can see the progress. She said that what they seem to be requesting is an additional list of those projects that are not yet funded. She said they usually would not put the maintenance projects on the list, though she guessed they could put everything in the budget on the list if they wanted. Commissioner Carter said it needed to be things like the swimming pool that have attracted public interest so they can have access on the City website to what the status is.

COMMUNICATIONS AND PETITIONS

Mimi Hardman, 300 S. Lake Shore Blvd, expressed her joy that the report for the Depot Museum addition showed there were not environmental problems and that they have awarded the contract. She also expressed her concerns with the lack of maintenance on City buildings gotten through grants and the amount of damage caused by unsupervised vandals at the gymnasium. Her concern was that when she got the grants to build the gym, it was a requirement to keep up the building and her fear was that if they found out the shape of the gym, they may request the funds to be returned, or it may keep them from getting any new grants. She added that the two workers at the gym were concerned about their jobs, afraid the gym will be closed down. Mr. Gallup said they were not City employees, but employees from the Boys and Girls Club. He gave a report on the status of repairs. Ms. Hardman also said she hoped they would get their sprinkler system fixed downtown. Ms. Delmar said that was part of the CDBG Grant and they were working on it.

Greg Massey, 1332 Morningside Drive, who owns the wine and beer bar on Lincoln Avenue, agreed that the noise coming from cars has been a tremendous problem as well as problems caused by people outside his business, mostly after he closes. He added that he has done everything feasibly possible to control it, calling the police and even offering to hire off-duty police on the weekends. He said that Massey's Place is the only establishment around for African Americans and those patrons who come should not be targeted for the problem coming outside on the street or from cars. Mayor Van Sickle said that they were not going to do anything to the businesses already established. They would just keep a lot of bars from opening in an area with residential units so close.

Commissioner Rogers read a reply letter to Mr. Sam Poole from the State Attorney General and said Mr. Poole would like to speak to the Commission for their help in a matter of concern to him because the Attorney General said he could not.

Sam Poole, 7731 Camp Mack Road, expressed his concerns with the inter-local agreement that the City passed regarding the Lake Wales Airport. He said that he could not find anything in Chapter 189 [Florida Statutes], and any reason why Chapter 163 [Florida Statutes] can create a device by which the former City Manager took control of the operation of the Airport. Mr. Poole accused the past City Manager of misappropriation of funds in building a well at the airport, corruption, and usurping the Airport Authority Board's authority in controlling the airport and its fund. He claimed the well was not needed as you don't fight airplane fires with water but with foam. He asked the Commission to review the issue and also he would like a job description for the Board members so they know what their duties are.

City Attorney Chuck Galloway said that Chapter 189 of the Florida Statutes creates the ability to create a dependent board, which is what the Airport Authority is, and sets forth the requirements of the ordinance adopted by the City. The inter-local agreement under Chapter 163 says a dependent board is a government function and another government function can enter into an inter-local agreement with it. For example, the county and City, or the City and the state, can enter into an inter-local agreement, which is perfectly appropriate under Chapter 163. The dependent Airport Authority Board was appropriately created under Chapter 189 and is still appropriate as it exists today. Mr. Poole said that there is nothing in the provision of Chapter 189 that allows any change in the function of that Board by anybody and there is no provision in that Chapter for an inter-local agreement to supersede.

Mayor Van Sickle asked for an update on the situation as he did not think any of the Commissioners had been involved. Ms. Delmar said the Finance Director had done a lot of research on the topic.

Dorothy Pendergrass, Finance Director, said she went to the Airport Authority Board meeting a few months earlier and found that some of the newer board members did not have the documentation that had existed prior to their coming onboard. So she created a book for all the board members in date order of all the documentation including the inter-local agreement, various correspondence, and complaints. Over the four-and-a-half years there have been a lot of disagreements noted in the correspondence and minutes. The Inter-local agreement talked about the Airport Authority not having funding, and had staff from the City to help out. On the last page it states that if they don't want the City's help they can go back at any time with written mutual consent. She said that five months prior Mr. Poole issued a complaint notice and received correspondence from the FAA and Attorney General's Office. The Attorney General's Office said they could not render an opinion of ordinances, but only on state law.

Mr. Galloway said that local ordinance created the Airport Authority and so the Attorney General would not render an opinion, or on Chapter 163 as it relates. Ms. Pendergrass said that if this issue can be resolved or clarified, then as a Finance Director for the City and the Finance Officer for the Airport Authority, she would appreciate it. As the City Attorney would have to draft a letter with all the information in it, there would be a cost to the City. She said this may end up like the two other complaints brought before the Airport Authority where items were brought up and the findings in the end said the City and the airport authority were okay. She said her recommendation was to allow the dependent airport authority to continue for a few more years because they are coming out of the hurricanes, they have their t-hangers and construction is going on, but in two or three years for the City Commission to go back to the Florida Statute 189 and see if there is benefit to the taxpayer from the existence of an dependent special district.

Ms. Delmar said the inter-local agreement is only good for five years. Ms. Pendergrass said the agreement has a paragraph that says that in five years the Airport Authority expects to be able to fund itself, but does not necessarily say it ends. So it could go on with the option of amending it and that at any time the Airport Authority and City could mutually decide to change the terms. She said she was more than willing to support any changes.

The Mayor said he doubted anything would be resolved at the present meeting. Ms. Pendergrass said that all the information given to the Airport Authority is on CD's and said she could provide the Commission with a copy. Commissioner Thornhill said that what the disagreement boils down to is if the insurance money was used to make the restorations to the airport or used for other things; and also if the inter-local agreement was left in the hands of the airport the money would have been spent on the airport.

Mr. Galloway said it had to have permission of the City Commission. Ms. Pendergrass said that all the insurance proceeds were spent relating to the airport. She said she could give them the documentation showing how the money was spent. She explained how asset depreciation was not taken into account by Mr. Poole and other complainants on how the money was spent. Ms. Delmar said that when those assets were included in the general fixed asset schedule they were not depreciated but as soon as they were transferred to the airport fund, they were depreciated. Ms. Pendergrass said the root of the problem is who has control over the airport.

Commissioner Rogers asked if there was any money from the airport spent on the well. Ms. Pendergrass said yes. Ms. Delmar said the reason the money was spent on the well was because they couldn't put the buildings back and get them certified for occupancy without the presence of the well. No well, no CO, no airport. Mr. Galloway added that there had to be enough fire-flow for there to be CO's.

Commissioner Rogers asked for a breakdown of how much money went into the well plus the clarification of what the state law requires for a fire-well, which were some of the things he had been asked and has not been able to give a satisfactory answer because this happened before he became a Commissioner. It was the complainants' contention that there was no need for the well because there was adequate water supply next door at the mattress factory.

Commissioner Carter said, as the past Chairman of the Airport Authority, that some of the proceeds from the insurance were spent on digging up the well, which was at the direction of the Fire Marshall who said if you want to put the buildings back up, you have to have the fire-flow. There was no choice, which makes sense that you have to be able to protect the assets that you put up.

Fire Chief Brown said that in regards to the well, in the interpretation of the codes in the Florida Statutes, you are required to have the fire-flow. It is then up to the utilities administration to decide how to do that.

Commission Rogers said there is also a requirement for so much water for so many minutes and Chief Brown concurred. He added that the foam that is used to put out fires on aircraft is concentrated like dish soap and requires a lot of water to turn that soap into foam.

Ruth Dampier, 1154 S. Lake Shore Blvd, commended staff for the work it took to gather all the information given out at the meeting and said that the past City Manager, Tony Otte, was not fired. The Commission let him go for insufficient performance.

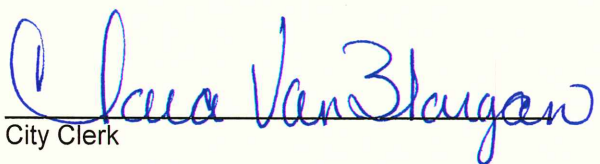
Leon Weech, 620 Emerald Avenue, explained why he was in favor of a strong Commission/Mayor form of government.

There being no further business, the meeting was adjourned.



Mayor/Commissioner

ATTEST:



City Clerk

City of Lake Wales
COMMISSIONER'S OATH

"I, Michael S. Carter, do solemnly swear that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida;

that I am duly qualified to hold office under the Constitution of the State;

and that I will well and faithfully perform the duties of Commissioner for the City of Lake Wales in the office of which I am now about to enter,

So help me God."



Michael S. Carter, Commissioner
May 4, 2010

City of Lake Wales
MAYOR'S OATH

"I, L. Jack Van Sickle, do solemnly swear that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida;

that I am duly qualified to hold office under the Constitution of the State;

and that I will well and faithfully perform the duties of Mayor for the City of Lake Wales in the office of which I am now about to enter,

So help me God."



L. Jack Van Sickle

L. Jack Van Sickle, Mayor
May 4, 2010