

The regular meeting of the Lake Wales City Commission was held on October 19, 2010 at 6:00 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor L. Jack Van Sickle.

## **INVOCATION**

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

## **PLEDGE OF ALLEGIANCE**

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

**COMMISSIONERS ABSENT:** None.

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

## **MAYOR**

### **Agenda Item 5.            PROCLAMATION: Polk County Family Week, November 13-20**

Mayor Van Sickle read a proclamation proclaiming November 13-20, 2010 as "Polk County Family Week." The proclamation was accepted by Pat Reed, Polk County Community Outreach Coordinator.

### **Agenda Item 6.            PRESENTATION: of the Tampa Bay Library Consortium's 2010 Library Champion Award and the Florida Library Association's 2010 Award for Exceptional Service to Florida's Libraries to Senator J.D. Alexander**

Lake Wales Librarian Tina Peak introduced Gladys Roberts, Cooperative Coordinator for the Polk County Library Cooperative, and Charlie Parker, Executive Director of the Tampa Bay Library Consortium, who presented to Legislative Assistant Patty Harrison on behalf of Senator J.D. Alexander, the Tampa Bay Library Consortium's 2010 Library Champion Award and the Florida Library Association's 2010 Award for Exceptional Service to Florida's Libraries.

### **Agenda Item 7.            COMMENDATIONS: Officers Lynette Townsel (COPS) and Officer Sean Ouellette (ACT) for a Burglary Investigation, and Officer James Hampton (Canine Unit) for a Water Rescue**

Police Chief Gillis presented commendations to Officers Lynette Townsel (COPS), Sean Ouellette (ACT), and Officer James Hampton (Canine Unit).

## **CONSENT AGENDA**

### **Agenda Item 8.            APPROVAL OF MINUTES: September 21, 2010 Regular Meeting October 5, 2010, Regular Meeting**

Commissioner Rogers made a motion to approve the minutes for the September 21, 2010 and October 5, 2010 regular meetings. The motion was seconded by Commissioner Howell.

By Voice Vote:

Commissioner Rogers  
Commissioner Howell

"YES"  
"YES"

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

The motion carried 5-0.

## **OLD BUSINESS**

**Agenda Item 9. Ordinance 2010-16, Police Officers' Pension Plan Amendment – 2<sup>nd</sup> Reading & Public Hearing**  
**Ordinance 2010-17, Firefighters' Pension Plan Amendment – 2<sup>nd</sup> Reading & Public Hearing**

The full staff memo is incorporated into the minutes.

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

## **SYNOPSIS**

The City Commission will consider a proposed amendment to both the Police Officers' Pension Plan and Firefighters' Pension Plan for partial allocation of DROP investments options.

## **RECOMMENDATION**

Staff recommends the City Commission take the following separate actions:

1. Adopt, after second reading and public hearing, Ordinance 2010-16 providing for an amendment to the Police Officers' Pension Plan for partial allocation of DROP investment options.
2. Adopt, after second reading and public hearing, Ordinance 2010-17 providing for an amendment to the Firefighters' Pension Plan for partial allocation of DROP investment options.

## **BACKGROUND**

The City Commission approved Ordinances 2010-16 and 2010-17 at its meeting on Tuesday, October 5, 2010.

Within the current Police Officers' and Firefighters' retirement plan, any member of the system who has satisfied the requirement for normal retirement may elect to withdraw from the retirement system while continuing to be an employee of the city for a period of up to five (5) years. During this period, the member and employer shall cease to make contributions to the fund and benefit accruals shall cease at the date of withdrawal from the system.

At the time of withdrawal, the member may elect any optional form of retirement income as allowed by the Plan. The amount of the monthly pension which would otherwise be paid shall be maintained as a co-mingled "DROP" account in the name of the member within the fund and shall be segregated from other trust assets on a bookkeeping basis only.

Under the current retirement system, participants in the DROP may elect investment options in either the Interest Election or the Earnings Election but are not allowed an allocation between the two investment options. For each DROP member there is a \$60 quarterly fee charged by the actuarial to calculation the member's quarterly drop account balance. This fee is paid as part of the administrative cost of the plan.

If approved, proposed Ordinance 2010-16 and Ordinance 2010-17 will allow partial allocation between the Interest Election and the Earnings Election investment options. This ordinance also provides that any additional costs arising for the election of partial allocation of the monthly benefit amount shall be paid by the DROP member.

Foster & Foster, actuarial consultants for the Police Officers' Pension Plan and Firefighters' Pension Plan, have provided impact statements which state that if the DROP member were required to pay the \$60 fee for each extra update, then the City would bear no additional administrative expenses associated with this proposed provision.

#### **FISCAL IMPACT**

Ordinances 2010-16 and 2010-17 will result in no fiscal impact for either Pension Plan provided the DROP member is required to pay for any additional administrative fees for each extra update.

[End agenda memo]

Ms. VanBlargan read Ordinance 2010-16 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 PARTICIPANTS OF THE MUNICIPAL POLICE OFFICERS' PENSION PLAN MAY PARTIALLY ALLOCATE DROP BENEFIT PAYMENTS INTO EITHER OR BOTH OF THE STATED OPTONS; 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 Rogers made a motion to adopt Ordinance 2010-16 after second reading and public hearing. The motion was seconded by Commissioner Thornhill.

By Roll Call Vote:

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

The motion carried 5-0.

Ms. VanBlargan read Ordinance 2010-17 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 PARTICIPANTS OF THE FIREFIGHTERS' PENSION TRUST FUND MAY PARTIALLY ALLOCATE DROP BENEFIT PAYMENTS INTO EITHER OR BOTH OF THE STATED OPTONS; 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 Thornhill made a motion to adopt Ordinance 2010-17 after second reading and public hearing. The motion was seconded by Commissioner Rogers.

By Roll Call Vote:

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

The motion carried 5-0.

### **Agenda Item 10. Ordinance 2010-24, Modifying Fees for the Northwest Complex (Frazier Field) – 2<sup>nd</sup> Reading & Public Hearing**

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Dorothy Pendergrass, Finance Director, and Katie Kinloch, Administrative Assistant]

### **SYNOPSIS**

The Commission will consider establishing a fee to reimburse the public for cost of weekend and after-hour staff time, preparation and lining of the fields, and use of overhead lighting at Northwest Complex (Frazier Field) when rented outside of normal operating hours.

### **RECOMMENDATION**

It is recommended that the City Commission adopt Ordinance 2010-24, establishing fees for use of the Northwest Complex (Frazier Field), after second reading and public hearing.

### **BACKGROUND**

The City Commission approved Ordinance 2010-24, after first reading, on Tuesday, October 5, 2010.

#### **Weekend and After-Hours Staff Time:**

On December 19, 2006 the City Commission adopted Ordinance 2006-48 establishing rules and regulations for the use and rental of city parks and recreation facilities. On January 19, 2010, the City Commission adopted Ordinance 2010-01 that included a staff charge for employee presence at the Austin Center during rental functions.

Ordinance 2010-01 did not address the issue of reimbursement of staff costs incurred when the Northwest Complex is rented after hours and on weekends and city staff has to open and close the complex. Staff is also needed to turn on and turn off the overhead lights if the fields are rented at night. The City does not release a key to this complex to rental groups because of past experiences with vandalism, violation of rules and lack of control over use of the fields.

Currently the City is not charging for staff time to do this service, so the public is bearing this cost. Staff recommends charging a flat fee of \$15.50 per rental for staff time opening, closing and lighting activation after hours and weekend tournaments and softball games. This is the equivalent of 1 hour of overtime calculated as follows: the employee's current hourly rate multiplied by 1.5 (time-and one-half) plus the cost of the city's FICA and pension contribution.

#### **Preparation and Lining of the Ball Fields:**

At its meeting on September 21, 2010 the City Commission gave final approval to the Little League contract which provides for maintenance of softball fields #1 and #2 at the Northwest Complex, also called Frazier Field. The contract does not include the preparation and lining of a field prior to its rental for tournaments or softball games because this task is not a part of field maintenance.

Staff is proposing a \$25.00 "Field Preparation and Lining Fee" for each ball field rented when preparation and lining are requested. This request would be made in writing on the City's rental agreement form. The fee, however, would not be charged to a group or organization that does not want the fields prepared or lined prior to its event.

The \$25.00 fee would be allocated as follows:

- Twenty dollars will be allocated towards the cost of hiring an outside service to prepare and line the ball fields. Mr. Jim Maggard, President of Lake Wales Little League has agreed to prepare and line a field when requested by the City for a cost of \$20.00 per field.
- Five dollars will be allocated to cover the city's administrative costs (review/processing monthly invoices, accounts payable processing, general ledger coding, etc.).

#### **Use of Overhead Lighting:**

At various times throughout the year, groups and organizations who rent the Northwest Complex fields request the use of the overhead field lighting so that their event can continue after dark until the Complex closes at 10:00 p.m. Groups and organizations have been able to use the overhead lighting at no cost.

Prior to October of 2008 groups and organizations were allowed to use the overhead lighting with free access to be able to turn them on and off. This practice has been discontinued and a city staff member is the only one who has access to the controls for lighting at the complex. A request must be made in advance by a group or organization before use of lighting is approved and activated.

The electrical cost at the complex currently averages \$248.11 per month based on consumption since October 2009. The total annual cost has been reduced from \$6,355 in FY07'08 to \$5,573 in FY08'09 to \$2,977 in FY09'10. This reduction is due to the fact that, since May 2009, use of the overhead lights is not allowed without city staff on site to turn the lights on and off. To offset some of the electrical costs, staff is proposing a lighting fee of \$15.00 per rental for groups and organizations who request use of the overhead field lighting during their event.

#### **OTHER OPTIONS**

Do not approve Ordinance 2010-24. Groups and organizations renting the fields at the Northwest Complex will continue to use the overhead lighting without cost, there will be no reimbursement for city staff to open and close the complex after hours and on weekends, and the City will incur the cost of preparing and lining the ball fields.

#### **FISCAL IMPACT**

Fees will be charged to offset costs of city staff associated with opening and closing the complex after hours and on weekends, offset the cost of electricity for overhead lighting, and offset cost of preparing and lining the ball fields.

[End agenda memo]

Ms. VanBlargan read Ordinance 2010-24 by title only.

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 18, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES BY PROVIDING FOR PAYMENT OF COST OF STAFF TIME FOR AFTER HOURS AND WEEKEND TOURNAMENTS AND SOFTBALL GAMES, PROVIDING FOR COSTS FOR PREPARING AND LINING OF BALL FIELD, AND PROVIDING FOR PAYMENT OF COST FOR USE OF OVERHEAD LIGHTING OF BALL FIELDS, AND PROVIDING FOR AN EFFECTIVE DATE.**

#### **OPENED PUBLIC HEARING**

There were no comments made by the public.

#### **CLOSED PUBLIC HEARING**

Commissioner Thornhill made a motion to adopt Ordinance 2010-24, establishing fees for use of the Northwest Complex (Frazier Field), after second reading and public hearing. The motion was seconded by Commissioner Carter.

By Roll Call Vote:

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

The motion carried 5-0.

**Agenda Item 11. Ordinance 2010-25, Police Officers' Pension Plan Amendment – 2<sup>nd</sup> Reading & Public Hearing**  
**Ordinance 2010-16, Firefighters' Pension Plan Amendment – 2<sup>nd</sup> Reading & Public Hearing**

The full staff memo is incorporated into the minutes.

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

#### **SYNOPSIS**

The City Commission will consider amendment of both the Police Officers' Pension Plan and the Firefighters' Pension Plan for purposes of compliance as a "qualified plan" under IRS Code Section 401(a).

#### **RECOMMENDATION**

Staff recommends the City Commission take the following actions:

1. Adopt, after second reading and public hearing, Ordinance 2010-25 providing for amendments to the Police Officers' Pension Plan.
2. Adopt, after second reading and public hearing, Ordinance 2010-26 providing for amendments to the Firefighters' Pension Plan.

## **BACKGROUND**

The City Commission approved, after first reading, Ordinances 2010-25 and 2010-26 on Tuesday, October 5, 2010.

On August 12, 2010, the Police Officers' Pension Plan and the Firefighters' Pension Plan each received a letter from their attorney, the Law Offices of Sugerman & Susskind. The pension attorney recommended that the boards of trustees apply for a Favorable Determination Letter during Cycle E for their respective Plans.

A Favorable Determination Letter is a letter from the IRS stating that the provisions of the plan, as set forth in the plan document, satisfy the requirements of Section 401(a) of the Internal Revenue Code. A plan that satisfies the requirements of Section 401(a) is deemed to be a "qualified plan," and is entitled to favorable tax treatment. Specifically, the employees are not taxed on the value of contributions paid on their behalf until they begin to receive benefits under the plan; and the income of the fund, including investment earnings, is not subject to taxation.

Cycle E runs from February 1, 2010 to January 31, 2011. Although a plan may apply for a Favorable Determination Letter outside of its designated five-year cycle, Sugerman & Susskind advised the board of trustees to file its application in accordance with the designated cycle for the plan. The IRS has indicated that plans that file during the cycle will be treated leniently. Also, with respect to the current application period, its ending date, January 31, 2011, is also the deadline for governmental plans to make any remedial plan amendments required by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Generally, therefore, in the case of an application submitted prior to that date, if the IRS determined that certain amendments were required in order to bring the plan into compliance with EGTRRA, the trustees would be permitted to make the necessary amendments without any penalties being levied against the plan. In the case of an application submitted after January 31, 2011, penalties may apply to each provision, or lack thereof, of the Plan that does not comply with the requirements of EGTRRA.

The preparation of an application for a favorable Determination Letter is a multi-step process. Ordinance 2010-25 and 2010-26 amendments are the first step. If approved, the Finance Department shall complete the second step by preparing all necessary IRS forms required for an Application For Determination for Employee Benefit Plan (Form 5300) and any additional related forms. The Finance Department expects to be able to complete the filing process during November of 2010.

## **FISCAL IMPACT**

Foster & Foster, actuarial consultants for the Police Officers' Pension Plan and the Firefighters' Pension Plan, have reviewed the proposed Ordinances amending the Plans to incorporate recent changes in Internal Revenue Code and Chapter 2009-97, Laws of Florida. They have determined that adoption of these ordinances will have no impact on the assumptions used in determining the funding requirement of the program.

[End agenda memo]

Ms. VanBlargan read Ordinance 2010-25 by title only.

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA,**  
2010-595

**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 STATE AND FEDERAL LAWS AND REGULATIONS AND SECTION 401(a) OF THE INTERNAL REVENUE CODE; 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 Rogers made a motion to adopt Ordinance 2010-25 after second reading and public hearing. The motion was seconded by Commissioner Thornhill.

By Roll Call Vote:

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

The motion carried 5-0.

Ms. VanBlargan read Ordinance 2010-26 by title only.

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, AMENDING CHAPTER 16, ARTICLE III OF THE LAKE WALES CODE, TO PROVIDE THAT THE TRUSTEES OF THE FIREFIGHTERS' PENSION PLAN AND TRUST BE IN COMPLIANCE WITH STATE AND FEDERAL LAWS AND REGULATIONS AND SECTION 401(a) OF THE INTERNAL REVENUE CODE; 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 Thornhill made a motion to adopt Ordinance 2010-26 after second reading and public hearing. The motion was seconded by Commissioner Howell.

By Roll Call Vote:

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

The motion carried 5-0.

**NEW BUSINESS**



**Agenda Item 12. Ordinance 2010-27, Repealing Ordinance 2009-17 – 1<sup>st</sup> Reading**

The full staff memo is incorporated into the minutes.

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

**SYNOPSIS**

Ordinance 2010-27 is proposed for the purpose of repealing ordinance 2009-17 increasing the size of the CRA Board from five to seven members and reinstating provisions of Ordinance 99-06 designating the City Commission as the CRA Board of Commissioners.

**RECCOMENDATION**

If the Commission wishes to restore the City Commission as the CRA Board of Commissioners, it is recommended that the Commissioners approve Ordinance 2010-27 after first reading.

**BACKGROUND**

Following the first public hearing on the FY10'11 budget, Commissioner Rogers was asked several questions regarding the City Commission's authority to modify the proposed CRA budget. In discussing these questions with staff, it was determined that the expansion of the CRA Board from five members to seven members had modified the City Commission's authority for administering the CRA, including its control over expenditure of tax increment revenue. Commissioner Rogers then directed staff to prepare an ordinance to repeal Ordinance 2009-17 in order to reinstate the City Commission as the CRA Board. Ordinance 2010-22 was prepared for this purpose.

The following summarizes the establishment of the CRA Board of Commissioners and its various modifications as the Community Redevelopment Agency has expanded over time:

- Ordinance 69-3 created the Downtown Development Commission comprised of the Mayor, the Chairman of the Planning Board and five citizens for the purpose of "improving the physical appearance, enhancing the economic activity, and increasing the tax base for downtown Lake Wales."
- Ordinance 85-10 created the Community Redevelopment Agency, and the Downtown Development Commission became the CRA Board of Commissioners vested with all the powers delineated in F.S. §163.370.
- Ordinance 90-03 authorized the City Commission to take back from the CRA Board and reserve to itself all powers delineated in F.S. §163.70 and established the CRA as an advisory board to the Commission.
- Ordinance 90-10 established eligibility and appointment criteria for the CRA Board and established two Area Advisory Committees to assist the CRA Board in implementing redevelopment activities within the specific CRA areas (i.e., the Downtown area and Lincoln Avenue/Northwest neighborhood area).
- Resolution 99-06 modified the Community Redevelopment Plan and expanded the CRA to its current geographical configuration. This expansion necessitated a reconfiguration of the CRA Board because the expanded CRA included approximately 50% of the City's area and 100% of the population (at the time), and it was considered important that the CRA Board be representative of the entire community and accountable to the entire community for expenditure of CRA revenue.

- Ordinance 99-06, under the authority of F.S. §163.357(1) (a), designated the City Commission as the CRA Board of Commissioners.
- Ordinance 2009-17 expanded the membership of the CRA Board to include two citizen members nominated by the Chamber of Commerce. This ordinance effectively transferred the control over the budgeting and spending tax increment funds from the City Commission to the 7-member CRA Board.

If the City Commission wishes to repeal Ordinance 2009-17 and reinstate the City Commission as the CRA Board of Commissioners, proposed Ordinance 2010-27 will serve this purpose.

Sec. 2-73 of Ordinance 99-06 provided for establishment of a CRA Advisory Board composed of 5 citizens appointed by the Commission. Each commissioner is authorized by Sec. 2-73 to appoint a person who resides, owns property, or operates a business within the voting district represented by that commissioner. This code section was adopted in order to provide a vehicle for public input into matters to be decided by the CRA Board of Commissioners but was never implemented. Implementation of this code section actually provides for broader public input since the members are representative of all geographical areas contained within the boundaries of the CRA. An update of Sec. 2-73 to revise term expiration dates is included in Ordinance 2010-27.

In accordance with F.S. §163.346, notice of second reading and public hearing of Ordinance 2010-27 will be forwarded to the Board of County Commissioners, the Polk County School Board, and the Southwest Florida Water Management District.

#### **OTHER OPTIONS**

Make no change to the current composition of the CRA Board.

#### **FISCAL IMPACT**

None.

[End agenda memo]

City Manager Judith Delmar announced that there was a request that there be a discussion about postponing consideration of this particular ordinance until after a workshop on the CRA.

Commissioner Carter said he would like to consider putting this off until after the November 9<sup>th</sup> workshop, at which time the CRA will be discussed. It makes sense to get as much information on how the CRA works and does not work. This ordinance may be the right answer but we owe it to ourselves and the City to get all the information we can. He said he talked with the CRA Director in Bartow and got a better understanding of how it works over there, which may be an option. There are other options and alternatives that could be considered. It seems that we may be rushing into this so he would like this postponed until after the workshop on November 9<sup>th</sup>.

Commissioner Howell thought postponing was a good idea. She said that if they decide to approve this ordinance and set up a separate citizen advisory board, she would like the citizens on that board to know their duties such as what they can and cannot do and where they can or can't do CRA business.

Commissioner Rogers said he already understood the purpose of the CRA and what is supposed to be accomplished and he did not think a workshop or further discussion would change his mind or his vote.

Mayor Van Sickle said a seven member advisory board, as being proposed, would give the Commission more public input, and that advisory board members were the ones that would need to understand their role. He said he personally does not feel this should be held up for a workshop, and technically, we do not

follow Robert's Rules, but the tabling of an ordinance would require a motion and second.

Commissioner Carter made a motion to postpone consideration of Ordinance 2010-27 until after the November 9<sup>th</sup> workshop. The motion was seconded by Commissioner Howell.

By Roll Call Vote:

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

The motion failed 3-2.

Ms. VanBlargan read Ordinance 2010-27 by title only.

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, REPEALING ORDINANCE 2009-17 WHICH ADDED TWO PERSONS TO ACT AS MEMBERS OF THE COMMUNITY REDEVELOPMENT AGENCY BOARD OF COMMISSIONERS; PROVIDING THAT THE CITY COMMISSION SHALL CONTINUE TO BE THE AGENCY WHICH CONSTITUTES THE GOVERNING BOARD OF THE LAKE WALES COMMUNITY REDEVELOPMENT AGENCY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE**

Commissioner Carter said he was curious as to what had happened in the last year because this is the same board, except for himself, that unanimously approved the current organization of the board. He asked what had happened to cause this event to take place now and to want to change this back to a five member board.

Mayor Van Sickle said he could answer that, although he could not speak for any other Commissioner. He said that when the Commission approved the ordinance last year he was under the assumption that all items approved by the CRA Board would come back to the City Commission for final approval and that is not the case, which is the major difference. He said the Commission does want input and, to him, in looking at all the different areas that are covered by the CRA, you can see that some piece of those districts is in the CRA. This would allow the five Commissioners to ask someone from their district to sit on that advisory board and hopefully this could provide more insight to the Commission. He said this was his thought in the process.

City Manager Judith Delmar explained that when the CRA expanded in 1999 and the City Commission designated the governing body, or itself, to be the CRA board of Commissioners, that ordinance at the same time provided for a CRA Advisory Committee comprised of five citizens appointed by each of the Commissioners and that was never implemented. When the board was expanded to provide an additional avenue for public input, instead of implementing the CRA Advisory Committee they expanded the board not realizing at the time that they were transferring the fiduciary responsibility for approval of budget and expenditure of funds from the City Commission to the seven member board. That was what changed, the recognition that the City Commission transferred that authority.

Commissioner Thornhill said his assumption had been that the CRA Board was like other boards, such as the Airport Authority Board and the Recreation Board, where the City Commission has the final authority. He said he was all for citizen input so when he discovered that Section 2.73 was in the prior ordinance, he wondered why that was not brought up at that time. He realizes that there could be five citizens rather than two giving that public input. He said that ultimately the City Commissioners were the elected officials and they should be responsible for the funds.

Commissioner Howell said she thought that going back to the original plan and having the five citizen

advisory board, one chosen by each Commissioner, was a good idea as long as the advisory board members understand their duties. She said we could get Robin Gibson, who knows all about the CRA, to attend a workshop and explain it so everyone at the same time would know their duties and know how to spend or think about spending the money correctly. There would be no question about it. This would make a better board because they will not be working from what they think should be done. The meeting to explain the duties to the advisory board can be held right before a Commission meeting and then explained in the Commission meeting so everyone would know at the same time. That way, no one would be misconstrued on what their duties are.

Commissioner Rogers said the original intent and purpose was to bring old buildings up to code and get them back on the tax roll. No one can show him a building in Lake Wales where this was done. He said he was very disappointed over the years with the way the CRA was handled. He too would like more citizen input and he would like to see a five member board, but the Commission must remain in control of the money. The elected officials, according to our charter, are supposed to be in control of the CRA funds and expenditures, and that control needs to be returned to the City Commission.

Commissioner Howell asked for clarification that if the person sitting in seat three could choose anyone in the city and everyone else would have to choose someone from their district. Ms. Delmar explained that the original ordinance predates the last redistricting where that at-large seat was converted to a district seat. The language in the proposed ordinance will conform to that change, which is one of the changes that had to be made regarding the CRA Advisory Board.

Commissioner Rogers made a motion to approve Ordinance 2010-27 after first reading. The motion was seconded by Commissioner Howell.

By Roll Call Vote:

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

The motion carried 4-1.

Commissioner Thornhill said he would like to make one of the two citizens currently serving on the CRA Board his choice if they are not chosen by another Commissioner. He was asked if either of the two were in his district and Ms. Delmar said that Mr. Adkinson probably was. Commissioner Rogers asked if Mr. Horne was in his district. Ms. Delmar said she would check that out and find out who gets to appoint Mr. Horne and Mr. Adkinson.

#### **Agenda Item 13. Resolution 2010-23, Master Joint Participation Agreement 2011-A**

The full staff memo is incorporated into the minutes.

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

#### **SYNOPSIS**

Resolution 2010-23 updates the agreement providing funding for improvements to runway 17-35 safety area in the amount of \$100,000.00; FDOT: \$80,000.00 and City: \$20,000.00 and adding funding of \$5000.00 for its participation share of the Apron Flood Lighting and Perimeter Fencing project.

#### **RECOMMENDATION**

Staff recommends that the City Commission approve Resolution 2010-23 and enter into a Master Joint Participation Agreement with the Florida Department of Transportation (FDOT).

## BACKGROUND

In May 2005 the City of Lake Wales entered into a Joint Participation Agreement, Resolution 2005-14 with the Florida Department of Transportation (FDOT) for funding of the following Lake Wales Airport projects: Signage & Tetrahedron (air traffic pattern indicator), Automated Weather Observing System (AWOS), Precision Approach Path Indicator (PAPI), Master Joint Participation agreement with Hoyle, Tanner & Associates, Inc. Task Order #1 (planning and design of an Airport Master Plan and Airport Plan Update) and Automobile Parking.

In 2006, Resolution 2006-11 replaced the existing Joint Participation Agreement, incorporated the above projects that had not been completed to date (AWOS and Automobile Parking) and included additional funding for Automobile Parking and funding for FAA airport improvements (FDOT's match for upcoming FAA projects).

In 2007, Resolution 2007-04 replaced the existing Joint Participation Agreement, incorporated the projects from Resolution 2007-04, and included funding for the design phase of the Medium Intensity Runway Lights project (MIRLs) and for FAA improvements (FDOT's match for upcoming FAA projects).

In 2008, Resolution 2008-01 replaced the existing Joint Participation Agreement, incorporated the project that had not been completed to date (Automobile Parking) and included funding for the Medium Intensity Runway Lights project (MIRLs) construction phase and for FAA improvements.

In 2009, Resolution 2009-05 replaced the existing Joint Participation Agreement and included funding for the Medium Intensity Taxiway Lighting System (MITLs) construction phase.

In 2010, Resolution 2010-08 replaced the existing Joint Participation Agreement and included an amendment to the funding for the Medium Intensity Taxiway Lighting System (MITLs) from \$218,255.00 to \$318,897.00; FAA: \$302,953.00, FDOT: \$7972.00, City: \$7972.00. Funding was also provided for improvements to bring runway 17-35 safety areas up to standards and remark the pavement in the amount of \$100,000.00; FDOT: \$80,000.00 and the City: \$20,000.00.

Proposed Resolution 2010-23 replaces the existing Joint Participation Agreement and includes funding for the installation of Apron Flood Lighting and Perimeter Fencing in the amount of \$5,000.00 for the FDOT participation share. It should be noted that, in regard to the perimeter fencing, this is the first phase of a multi-phased project to secure the entire perimeter of the airport. Subsequent phases will occur after completion of the runway extension.

## FISCAL IMPACT

The City's match for runway 17-35 improvements is \$20,000.00

Federal (FAA) share is \$ -0-

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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The City's match for Apron Flood Lighting and Perimeter Fencing is \$5,000.00

Federal (FAA) \$191,008.00

FDOT share is \$5,000.00

10/11 budget

Apron Flood Lighting and Perimeter Fencing	\$201,008.00
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[Note: The actual project cost is \$201,062.00; both the City's share and the FDOT share are \$5,027.00. The JPA will be adjusted upon completion of the project to reflect actual cost.]

#### OTHER OPTIONS

The Improvements for runway 17-35 have already been approved by the City Commission.

Funding for the apron flood lighting and perimeter fencing project has already been accepted from the Federal Aviation Administration and design engineering with Hoyle, Tanner & Associates was also approved.

[End agenda memo]

Ms. VanBlargan read Resolution 2010-23 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) 427981 1 94 01 (IMPROVE RUNWAY 17-35 SAFETY AREAS TO STANDARDS AND REMARK PAVEMENT); 429241 1 94 01 (INSTALL APRON FLOOD LIGHTING AND PERIMETER FENCING) WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION TO ALLOW THEIR PARTICIPATION IN MULTIPLE AVIATION PROJECTS AT THE LAKE WALES MUNICIPAL AIRPORT.**

Ms. Allen introduced Mr. Wilbur Mathurin, consultant from Hoyle Tanner and Associates, who came to answer questions.

Commissioner Carter asked if the Airport Authority had seen and signed off on this plan. Ms. Allen said the Master Joint Participation Agreement does not go before the Airport Authority Board but has to have FDOT's approval. Because of their funding period, the Plan is changed every year. The 17-35 safety area had already been approved but they added funding for the perimeter fencing. Ms. Delmar said that though it did not go before the Airport Authority Board, these projects were included in the Master Plan. Ms. Allen said they were and that the Master Plan had been approved by the Airport Authority.

Commissioner Thornhill made a motion to approve Resolution 2010-23 and enter into a Master Joint Participation Agreement with the Florida Department of Transportation (FDOT). The motion was seconded by Commissioner Howell.

By Roll Call Vote:

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

The motion carried 5-0.

**Agenda Item 14.      Contracts for Construction of Airport Perimeter Fencing and Apron Flood Lighting and Professional Services Relating to the Project**

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 awarding the contract for construction of perimeter fencing and apron flood lighting at the Lake Wales Airport and authorizing an amendment to the agreement for professional services related to this project.

## RECOMMENDATION

Staff recommends that the City Commission take the following actions:

1. Award the contract for construction of Perimeter Fencing and Apron Flood Lighting at the Lake Wales Municipal Airport to Aabot Fence, Inc. in the amount of \$165,062.
2. Authorize amendment of Hoyle, Tanner & Associates Master Agreement Task Order #12 to include professional services in the amount of \$13,000 related to the Perimeter Fencing and Apron Flood Lighting Project at the Lake Wales Municipal Airport.

## BACKGROUND

On Thursday, August 19, 2010 at 2:00 p.m. Hoyle, Tanner & Associates and City staff opened sealed bids for the above referenced project. After analyzing the information provided by each contractor, Hoyle, Tanner & Associates determined that All-Rite Fence Company and Aabot Fence Company, Inc. had supplied the information necessary to adequately evaluate the bids. Hercules Fence Company Inc., failed to provide bid schedule B in their bid packet, therefore their bid was disqualified. The following bids were considered:

BIDDER	Bid Schedule A	BID SCHEDULE B	Total Construction
All-Rite Fence Company, Inc.	\$137,391.00	\$53,033.00	\$190,424.00
Aabot Fence, Inc.	\$131,982.00	\$33,080.00	\$165,062.00

On August 25, 2010, the City received notification from the Federal Aviation Administration that \$191,008 had been allocated specifically for the Perimeter Fencing and Apron Flood Lighting project at the Lake Wales Municipal Airport. In regard to the perimeter fencing, this is the first phase of a multi-phased project to secure the entire perimeter of the airport. Subsequent phases will occur after completion of the runway extension.

Master Agreement Task Order #12 with Hoyle, Tanner and Associates for design engineering services in connection with this project was approved by the City Commission on June 15, 2010. This amendment to Task Order #12 provides for construction phase services including project administration.

## FISCAL IMPACT

If staff's recommendation is approved, the project cost will total:

Design Engineering (approved 6/15/10)	\$23,000
Construction	\$165,062
Construction Engineering Services	\$13,000

Total Project Cost \$201,062

Total funding allocated for this project is as follows:

FAA \$191,008 City \$5,027 State \$5,027 Project Funding total: \$201,062

## OTHER OPTIONS

The City has already accepted the FAA grant for this project.

[End agenda memo]

Commissioner Rogers said he was told the fence would not be enclosing the airport, and that the runway would be left open. He asked if that was correct. Mr. Mathurin, consultant from Hoyle and Tanner, said that was correct up to a point. He said the intent of the project is to begin enclosing the airport and this was just phase-one of a multi-phase project that will start the process of securing the entire airport and this phase will include adding new fencing, replacing barb-wire with chain-link fencing, and repairing some of the existing fence. He explained that when the Master Plan was done in 2004, projects were set up as either short-term, mid-range or long-term.

Commissioner Howell said she wanted to make sure that the flood lights are FAA regulated and that the Airport Authority Board was aware and is in agreement to this. Mr. Mathurin said that before the city could accept the grant for the design of this project, FAA had to sign-off on everything including the location of the lights and fence, and the type of fence and gates that would be used. He explained how he, Ms. Allen and Mr. Galvin got the FAA to approve installing electric gates, and the use of proximity cards that will control access to the airport. The three of them tried to figure out what was best for the airport, explaining and answering questions for the Airport Authority when invited, but that every agreement the city undertakes has to be approved by the FAA. Ms. Delmar said that because a lot of the funding comes from the FAA, we have to comply with their rules, their preferences and what they want. Mr. Mathurin said that everything is done in accordance to national standards and not just to the Orlando FAA's standard.

Commissioner Carter asked if FBO Betty Hill had any comments.

Ms. Hill said the Airport Authority discussed the fencing and some of the members were not in favor of its location on the west side because they thought it was too close. She explained that there was one fence, then a second fence, then the perimeter fence which actually will be the third fence. She said the board wanted to know why they are cutting in on airport property by putting the fence in-between the other two instead of back at the second fence. Commissioner Carter asked if those two fences were on city property or on Mr. Crews' property. Mr. Mathurin said the fences there now are cattle fences that belong to Mr. Crews but it is on city property. According to FAA standards, a cattle fence does not protect airports and is only meant to keep cattle out. The fence to the west subdivides the wetlands and is partly on Mr. Crews' property and city property. The airport is open to the west and south and the only fence on the airport property is along Airport Road, plus the scattered cow fences throughout the airport.

Ms. Hill said the Airport Authority did not know why they would spend the money to put the fence in the center instead of further out to the property line. Mr. Mathurin said that only long-term development is scheduled for the wetlands. To put a fence there now would be more expensive because of permitting requirements and is not necessary for a short-term development. Projects are funded by the FAA based on priority and what is needed right now. The FAA does not want to put a fence around the whole airport if it will not be needed for another 15-20 years.

Ms. Hill said the Airport Authority is saying that the property to the west of the new fence-line is still on city property. Commissioner Carter asked how far back the setbacks were and Mr. Mathurin said more than 100 feet.



Commissioner Howell asked why there was so much distance between the fences and Mr. Mathurin explained that they tried to find a location for the fence that would least disrupt the wetlands.

Commissioner Thornhill made a motion to award the contract for construction of the perimeter fencing and apron flood lighting at the Lake Wales Municipal Airport to Aabot Fence, Inc. in the amount of \$165,062 and to authorize the amendment of Hoyle, Tanner & Associates Master Agreement Task Order #12 to include professional services in the amount of \$13,000 related to the Perimeter Fencing and Apron Flood Lighting Project at the Lake Wales Municipal Airport. The motion was seconded by Commissioner Howell.

By Voice Vote:

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

The motion carried 5-0.

#### **Agenda Item 15. Award of Contract for Utility Payment Services**

The full staff memo is incorporated into the minutes.

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

#### **SYNOPSIS**

Contract with Amscot Corporation for utility payment services.

#### **RECOMMENDATION**

It is recommended that the City Commission authorize the City Manager to execute an agreement with Amscot Corporation for utility payment services.

#### **BACKGROUND**

The City currently provides for in-person utility bill payments at its Municipal Complex located at 201 Central Avenue, Lake Wales. The Complex currently is the only location for customers to make in-person utility bill payments. The City's goal is to provide additional customer convenience by contracting with a firm that has multiple locations and extended hours for acceptance of in-person utility payments.

On August 17, 2010, the City Commission approved issuance of a request for proposal for utility payment services. Proposals were opened on September 17, 2010 from the following vendors:

- Payment us Corporation
- Tax Collector of Polk County
- United Adjustment Corporation
- Amscot Corporation

The review committee consisted of Dorothy Pendergrass, Finance Director, Sandra Davis, Human Resource Director and Tiffany Miller, Billing/Collection Manager.

Proposals were evaluated based on following:

- Qualifications & Experience
- Fees
- Financial Stability
- Acceptance of Terms & Conditions

The following items were noted during the review process:

	Experience	Location	Florida Locations	Ability to Provide Service	Customer Fee per Transaction	Financial Stability	Acceptance of Terms & Conditions
<b>Paymentus Corporation</b>	Over 15 year of experience.	Atlanta, GA	Could offer a kiosk machine within the Municipal Complex Building.	Yes	\$ 3.50	Appears Reasonable	Not Included
<b>Tax Collector for Polk County</b>	Over 12 years of meeting stated goals of uploading data at the time payments are processed.	Bartow, FL	Tax collector offices located - Lake Wales, Bartow & Haines City. Monday thru Friday from 8:30 a.m.-5:00 p.m.	Willing to consider processing payments in June of 2010	Not Included	Yes	Full Acceptance
<b>United Adjustment Corporation</b>	Over 10 years as a collection agency.	Kentland, IN	Three Lake Wales location - Advance America, Wal-Mart & CVS.	Yes	\$ 10.00	Appears Reasonable	Full Acceptance
<b>Amscot Corporation</b>	Over 20 years experience.	Tampa, FL	174 locations, 12 branch in Polk County, open 7 day per week, and extended hours.	Yes	\$ 2.00	Appears Reasonable	Changes Provided

\* Copies of proposals received are available for public review.

Based on the proposals received, the review committee recommends Amscot Corporation for in person utility payment services.

## FISCAL IMPACT

City staff recommends transaction fees be paid by the customers utilizing the service.

[End agenda memo]

Ms. Pendergrass reviewed Agenda Item 15.

Mayor Van Sickle and Commissioner Carter complemented Ms. Pendergrass for the contract rating system she developed because it made it much easier to follow.

Commissioner Thornhill made a motion to authorize the City Manager to execute an agreement with Amscot Corporation for utility payment services. The motion was seconded by Commissioner Howell.

By Voice Vote:

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

The motion carried 5-0.

## Agenda Item 16. Lease Renewal for Senator Alexander's District Office

The full staff memo is incorporated into the minutes.

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

## **SYNOPSIS**

Approval will renew the lease agreement with Senator J. D. Alexander through November 8, 2011.

## **RECOMMENDATION**

Staff recommends that the City Commission renew the lease with Senator J. D. Alexander beginning November 9, 2010 through November 8, 2011 for \$600 a month at the Municipal Administration Building.

## **BACKGROUND**

The City Commission approved the original lease with Senator Alexander on October 20, 2010. The term of the lease allows for two additional terms.

**The same basic deal points are as follows:**

- Square footage--/- 376
- Rooms --111,115, and part of 116 in the Administration area in the City Manager's Office
- Lease Term #2, one remaining renewal option
- Rent --\$600.00 per month, plus appropriate sales tax. Rent is a modified Triple Net Lease. Water, Sewer, Common Area Restrooms, No CAM or additional pass through charges are in the lease.
- Access—Normal Business Hours of City Hall

The Lease meets the general market parameters of the available space in the marketplace.

## **CURRENT FISCAL IMPACT**

**Impacts on Revenue:** There is a positive impact on revenue through the lease payments for the space.

**Impacts on Expenditures:** No impact with this project

## **OTHER ALTERNATIVES**

As the market was surveyed and the space and time limitations of the project could not be met, this remains the most probable solution.

[End agenda memo]

Commissioner Rogers made a motion to renew the lease with Senator J. D. Alexander beginning November 9, 2010 through November 8, 2011 for \$600 a month at the Municipal Administration Building. The motion was seconded by Commissioner Howell.

By Voice Vote:

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

The motion carried 5-0.

**Agenda Item 17. Sale of Parcel 273002-000000-034320 located on W. Park Avenue**

The full staff memo is incorporated into the minutes.

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

**SYNOPSIS**

The subject property was one of two advertised for Request for Bid and received no positive market response. An inquiry by Mr. Bryant has resulted in the presentation in the proposal for purchase as presented in this agenda item.

**RECOMMENDATION**

Staff recommends that the City Commission take the following actions:

1. Authorize conveyance of Property Appraiser's Parcel ID#273002-000000-034320 located on W. Park Avenue to Mr. James M. Bryant for the consideration value of Four thousand seven hundred Dollars and no/100 (\$4,700.00) with credits for removal of trees that are a safety issue. The Credit for tree removal is Two thousand seven hundred Dollard and no/100 (\$2,700.00). The net price to be paid at closing to the City is Two thousand Dollars and no/100 (\$2,000.00) and other Good and Valuable Consideration and Buyer Obligations as contained in the Deed.
2. Authorize the Mayor to execute the Deed of Sale.

**BACKGROUND**

The City had offered several properties for sale with no positive responses coming in from the Request for Bids that had a closing date of July 07, 2010. An inquiry had been made by Mr. Bryant as to the status of the subject lot. Subsequently, discussions were started with Mr. Bryant and the following are the conditions and restrictions agreed to by Mr. Bryant:

- The property will be placed on the real estate tax rolls for a taxable value of \$4,700.00;
- Buyer is accepting the property in "As is" condition;
- Buyer will not be resell or transfer the property to any entity that the Buyer is not the majority or controlling interest in for a period of 5 years;
- No variance for construction will be requested for a period of 5 years;
- Buyer covenants that it will keep the property clean of code violations;
- Buyer is responsible for all recording costs;

**CURRENT FISCAL IMPACT**

This is a positive fiscal impact based upon the following:

- The Buyer is assuming all liability for the property;
- The Buyer shall remove the tree elements that are considered a safety liability;
- The City will not bear any costs for the removal of the trees;
- The property will go from a non-performing asset to a taxable asset with tax revenue to the City;

**FISCAL IMPACTS OF OTHER ALTERNATIVES**

Commission could reject the proposal and return the property to the market and await another proposal. However, the City now would need to move forward with public expenditures for removal of the trees and disposal of them.

[End agenda memo]

Mr. Gallup reviewed Agenda Item 17.

Commissioner Carter asked for the address and there was none. He asked about the trees on the property and Mr. Gallup said the tree to the front of the property was the one with an active bee colony and the one to the rear of the property had significant damage to the core so both were recommended by the arborist to be taken down. Commissioner Carter asked if the only reason they were taking down the front tree was because of the bee's nest and Mr. Gallup explained it was not.

Commissioner Thornhill made a motion to authorize the conveyance of Property Appraiser's Parcel ID#273002-000000-034320 located on W. Park Avenue to Mr. James M. Bryant for the consideration value of four thousand seven hundred dollars and no/100 (\$4,700.00) with credits for removal of trees that are a safety issue and authorize the Mayor to execute the Deed of Sale. The motion was seconded by Commissioner Howell.

By Voice Vote:

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

The motion carried 5-0.

#### **Agenda Item 18.           Appointments – Police Officers' and Firefighters' Retirement Board**

The full staff memo is incorporated into the minutes.

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

#### **SYNOPSIS**

The appointments will fill vacancies on two city boards.

#### **RECOMMENDATION**

It is recommended that the City Commission make the appointments as deemed appropriate.

#### **BACKGROUND**

Vacancies exist on the Police Officers' and Firefighters' Retirement Boards. The City Commission is asked to make the appointments as deemed appropriate.

**Firefighters' Retirement Board** – Resident Members & 5<sup>th</sup> Seat Member are appointed by the City Commission. The board consists of five members. Two members must be legal residents of the City and two members must be full time firefighters employed by the Lake Wales Fire Department. Resident members are appointed by the City Commission; firefighter members are selected by a majority of the firefighters who are members of the plan. The fifth member is chosen by a majority of the other four members and appointed by the City Commission. Ordinance 2010-08; May 4, 2010, extended the term



[Begin agenda memo, prepared by Harold Gallup, Economic Development Director, and Tom Moran, Public Works Director]

## **SYNOPSIS**

The MOU is the result of actions of the Florida Legislature which caused the transfer of the maintenance of the Peace Creek Canal to the Southwest Water Management District; this document and individual easements between abutting property owners are needed for access from abutting property for maintenance activities. The benefit to the City is the improved maintenance of the Peace Creek Canal and better flood control.

## **RECOMMENDATION**

Staff recommends that the City Commission authorize the Mayor to execute the Memorandum of Understanding between the City and Southwest Florida Water Management District for the maintenance of the Peace Creek Canal with the following provisos:

- There are no costs to the City or property owners for any required documents either recorded or not for any easement participation;
- This is a voluntary program with no powers of taking of property by the District;
- All easements are individually negotiated that will include easement areas and access easement areas;
- No permits for any projects shall be withheld by the District if no agreement can be reached on an easement;
- The program will not produce diminished property values or reduced development area;

## **BACKGROUND**

The MOU provided with this agenda item has gone through a number of iterations and has been reviewed by a number of cities and respective staffs and legal advisors. Correspondence of September 2010 raised a number of questions and has resulted in a meeting with representatives from SWFWMD that produced clarification on a number of issues and provided the basis for the provisions recommended in the Staff Recommendation. The document and the referenced easements provide for a cooperative approach to providing access for canal maintenance without the highly charged environment of property being taken by some government action.

## **CURRENT FISCAL IMPACT**

There is no current fiscal impact for this action.

## **OTHER ALTERNATIVES**

Commission could reject the proposal and provide other directions for action.

[End agenda memo]

Mr. Gallup reviewed Agenda Item 19.

Commissioner Howell asked for confirmation that this would allow SWFWMD on the property for maintenance only. Mr. Gallup confirmed.

Commissioner Howell made a motion to authorize the Mayor to execute the Memorandum of Understanding between the City and Southwest Florida Water Management District for the maintenance of the Peace Creek Canal. The motion was seconded by Commissioner Thornhill.

By Voice Vote:

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

The motion carried 5-0.

**Agenda Item 20. Discussion of Preliminary Financial Statements for August 31, 2010, Fiscal Year to Date**

The full staff memo is incorporated into the minutes.

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

**SYNOPSIS**

The preliminary financial statements report revenues received and expenditures made through the end of August 2010. Revenues were slightly ahead of target in the General Fund and 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 August 31, 2010 are presented to the City Commission for review. At the end of August the City was 91.7% into the fiscal year. Twenty four of Twenty-six Payrolls (92%) have been expensed through August 31. Revenue and expenditure budgets have been adjusted to reflect changes through Budget Amendment #3.

**SUMMARY**

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

Fund	Budgeted	Actual at 8/31	Target at 8/31	Actual at 8/31 Over (Under) Target	Over (Under) as percentage of target
General					
Revenues <sup>1</sup>	\$10,977,235	\$10,619,682	\$10,365,636	\$254,046	+2.3%
Expenditures <sub>3</sub>	\$11,355,631	\$9,898,601	\$10,409,328	(\$510,727)	-4.5%
Special Revenue					
Revenues <sup>1</sup>	\$3,887,580	\$3,876,724	\$3,787,875	\$88,849	+2.3%
Expenditures <sub>3</sub>	\$2,322,342	\$3,428,460	\$2,128,814	\$1,299,647	+56.0%
Debt Service					
Revenues <sup>3</sup>	\$2,363,120	\$2,182,786	\$2,166,193	\$16,593	+0.7%
Expenditures <sub>2</sub>	\$2,363,650	\$1,884,169	\$1,884,169	\$0	+0.0%
Utilities					
Revenues <sup>1</sup>	\$6,308,450	\$6,020,725	\$5,924,447	\$96,277	+1.5%
Expenditures <sub>3</sub>	\$6,276,100	\$5,005,306	\$5,753,092	(\$747,786)	-11.9%



Airport					
Revenues <sup>3</sup>	\$107,193	\$89,853	\$98,260	(\$8,407)	-7.8%
Expenditures <sub>3</sub>	\$107,193	\$85,623	\$98,260	(\$12,637)	-11.8%

<sup>1</sup> Revenue target = prior year performance at same point in fiscal year

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

<sup>3</sup> 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 August we are 11/12 or 91.7% 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 this point in the fiscal year with the exception of that utility revenues are still lagging.

Revenues from water and sewer charges at the end of August 2010 were \$11,124 ahead of where they were in August, 2009 (water, -\$76,587; sewer, +88,175). If we use 91.7% of the fiscal year as the target level, however, water revenues were \$181,443 under target and sewer revenues were \$28,783 over target. This is a combined shortfall of \$152,661 compared to the budget. Operating expenditures were running behind target at the end of August. Excluding capital outlay and debt service, Utility Fund expenditures were 11.9% or \$747,785 below the target level.

Operating expenditures in the General Fund are running 4.5% behind target (\$510,727). Operating expenditures in the other Funds are running behind target levels.

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:

	9/30/2008	08/31/2010	Difference
Pool/Tax Anticipation Account	\$1,037,822	\$1,055,655	\$17,833

The City's overall cash position at the end of August 2010 increased over the cash position at the end of August 2009 (+472,000) In order to make a more accurate comparison, the following adjustments are made:

	prior year	current year	Difference
Total Cash & Investments	5,097,766	5,569,766	+472,000
Due to Other Governments	-50,654	-8,496	
Insurance Proceeds & Other Airport Cash	0	0	
Deferred Revenues*	-404,523	--413,273	
Cash & Investments Net of Adjustments	4,642,589	5,147,997	+505,408

\*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 August 2010 was \$505,408 higher than its August 2009 level.

In comparison to total cash and investments at July 31 of \$5,362,242 the August cash and investments position decreased by \$214,245. 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 August revenues from ad valorem taxes totaled \$17,010.

[End agenda memo]

Ms. Pendergrass reviewed Agenda Item 20.

### **CITY MANAGER'S REPORT**

#### City Commission Tracking Report

City Clerk Clara VanBlargan announced that, thanks to the IT Department, she now has the capability to receive input from citizens during public hearings and the Communications and Petitions portion of the meetings or during agenda items. She asked the newspapers if they would make people aware.

Mayor Van Sickle asked if this was a requirement because receiving questions during public meetings would not allow Commissioners to review them. City Attorney Chuck Galloway said it was not a requirement that he was aware of and that the Mayor's concern was certainly valid. He said that when a citizen comes forward during a meeting to speak, all the Commissioners are cognizant of what it is about whereas, unless the email is showing on all of their screens simultaneously, each Commissioner would not be able to analyze the same email that is being put forth. Mayor Van Sickle said he thought that was setting them up to look foolish. Because there would be no communication, they would have no way of asking the sender what they meant and so may not understand the question correctly.

Commissioner Howell asked who would get the information and the City Clerk said she would receive it and then would enter it into public record. The Mayor said the Commissioners would then be making a statement for public record based on a question they did not fully understand, which might be the wrong answer. Commissioner Howell asked if the City Clerk could email the questions to the Commissioners the following day. Mr. Galloway said that the best approach would be to set the query, reading it out to the Commissioners for their response, or provide the Commissioners with a printed copy so they would have an opportunity to analyze the information. The response could then be given at the next meeting.

Mayor Van Sickle said another problem was that it would be open-ended. The Commission could receive emails for three or four hours without the ability to cut them off. Before implementing something like this, he said the Commission should look at it closely. City Manager Judith Delmar said there were some legal issues the City Attorney would like to research.

Commissioner Howell said she could understand getting a question like, "Why did Commissioner Howell vote for the fence when no one in Lake Wales wanted it." But, she asked what would happen if a question was asked of one of the podium speakers, something that hadn't been discussed and would possibly open up too much. Mr. Galloway said that it would be inappropriate to proceed in that fashion because it is not done that way now. He explained that people in the audience can only direct their questions to either the Commission or to staff so if the email asked a question of the presenter, it would be something that no member of the audience would be able to do. He said this needed to be looked into.

Mayor Van Sickle suggested having a workshop to discuss this issue so questions could be asked. Commissioner Howell said they could require that questions reach the city clerk at least 40 hours in advance of the meeting so they could be researched. Mayor Van Sickle said the Commissioners already get emails from citizens along with phone calls, but those are not coming in blind like this. There also would be no means of cutting them off because it would be considered part of the public input. Mr. Galloway said there may be legal ramifications to it, but as he just heard about it, he needed time to do some research. He agreed that a workshop would be the best way to get the information to the Commissioners.

Commissioner Carter said he had been the one who had asked staff to look into this because there are a number of citizens who do not attend the meetings, for whatever reason, though they watch the proceedings on TV and have questions, issues and concerns. His thought had been to make a way possible, like other towns do, for those with concerns to communicate them during the Communication and Petition process. He said he understood the Commission's concern about not having a chance to look at the emails before responding, but that most of the citizens who come forward during Communication and Petitions do not need a response. They

just have something they want to "get off their chest". This would not replace the ability citizens have to communicate with staff or Commissioners by phone or email but to allow citizens who are not at the meeting to become part of the public input process.

Ms. Delmar said it also would put the city clerk in the position of having to filter the appropriateness of those comments or questions, to decide if they should be placed into the public record. Mayor Van Sickle said that because of the Sunshine Law all emails, including any colorful ones they may receive, would become public record and he was not sure they wanted to do that.

Ms. Delmar asked Commissioner Carter where the other cities with this capability were and he said he would have to get back with her on that. She said they could do the research on line. Mayor Van Sickle said it would be like having a town hall meeting and he did not know that they wanted to do that.

Ms. VanBlargan said she was only asked to announce that we now have the capability of receiving emails during a Commission meeting.

#### CITY MANAGER'S REPORT

Ms. Delmar reported on changes to the tracking report.

#### COMMUNICATIONS AND PETITIONS

Jean Scott, Townsend Avenue, thanked staff for cleaning the outside of the administration building. She reported that a tree at the intersection of 3<sup>rd</sup> Street and Polk Avenue needed to be trimmed because it blocks the view.

Wes Rogers, 500 E. Bullard Avenue, expressed his concern with what he thought were distortions of facts from Commissioner Carter, and the biased journalism reported by the Lake Wales News. He gave examples. Mayor Van Sickle cut in and said that Mr. Rogers was getting to a point of attacking a Commissioner and said he could not allow that. He asked that comments not be directed toward an individual or a Commissioner. Mr. Rogers finished his comments and said he thought it was time that citizens stood up and supported the city by requiring the Lake Wales News to show responsible journalism concerning city affairs.

#### COMMISSION COMMENTS

City Attorney Chuck Galloway announced the need for a meeting outside the Sunshine concerning the litigation for the Lake Wales Airport. He said that Section 286.011 (8) of the Florida Statutes creates a legislative exemption to governments regarding this and requires that he ask the City Commission to meet. The meeting concerns the litigation between Lake Wales Aviation Inc. and Phoenix Air, Inc. v. the City of Lake Wales and needs to be held on November 2, 2010, following public comment, but prior to the conclusion of the City Commission meeting. Those in attendance will be the members of the city, the city manager, the city attorney, and the attorneys provided for the defense of this litigation by the city's insurer, which he named. A court reporter will be required to record the meeting and a transcript will be transcribed but not published until the litigation is concluded. If the Commission will accept, then it will need to have this meeting so the Commission will be brought up to speed about what's happening in that litigation. Ms. Delmar's deposition will be taken for that litigation the day after tomorrow. There's been a notice to set the trial, which he believes is in February. The City Commission needs to be cognizant of what is going on and because it is outside the Sunshine and is not subject to disclosure and only those mentioned would be present.

Mayor Van Sickle noted that the meeting then would be at their next scheduled City Commission meeting, which was also on Election Day, and asked if that meeting should be moved. Ms. Delmar said that in the past they have rescheduled meetings that were on the city's Election Day but not for the general election day.

Commissioner Carter said he will be working the election and would not be able to attend if held on that day. Ms. Delmar suggested rescheduling the meeting, so it was set for Wednesday, November 3, 2010. Staff said there was nothing already advertised for November 3<sup>rd</sup> and Mr. Galloway said he would notify the insurance counsel. He added that it should not present a problem but if it does, they may have to reschedule again because the meeting has to be noticed in the fashion in which he is noticing it; it has to fall within an open meeting, and the final gavel for closing cannot happen until we go out, have our meeting and then come back.

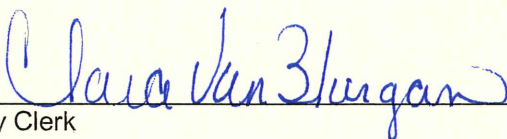
Commissioner Rogers said it was his understanding that they could not discuss what goes on in that meeting and Mr. Galloway said that was correct. The purpose is to make the Commission aware of what is going on. To divulge what takes place in that meeting could be detrimental to the city's position and the manner in which counsel is defending the city.

Commissioner Rogers complemented the Lake Wales Police Department for showing good judgment during an incident that happened on Sunday afternoon.

Commissioner Howell reported that she had been told on several recent occasions that people have been taking a shortcut by driving the wrong way on Spook Hill which could cause an accident if someone were driving up the hill. Police Chief Gillis said they would see if sign improvements could be made and would work on enforcement.

There being no further business the meeting was adjourned.

  
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Mayor/Commissioner

  
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City Clerk