

The regular meeting of the Lake Wales City Commission was held on October 18, 2011 at approximately 6:15 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor Michael S. Carter following the Invocation and Pledge of Allegiance.

INVOCATION

The invocation was given by Dr. Jim Moyer.

PLEDGE OF ALLEGIANCE

COMMISSIONERS PRESENT: Terrye Y. Howell; Jonathan Thornhill; John Paul Rogers; Betty Wojcik; Michael S. Carter, Mayor.

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.

[Meetings are recorded but not transcribed verbatim]

MAYOR

Agenda Item 5. Proclamation: National Pro Bono Week; October 23-30, 2011

Mayor Carter presented a proclamation to Doreen Yates to recognize October 23-30, 2011 as "Pro Bono Week" and the valuable work lawyers do to give of their time to make justice accessible to those who cannot afford legal assistance.

Proclamation: Polk County Family Week; November 12-19, 2011

Mayor Carter presented a proclamation to Al Dorsett to recognize November 12-19, 2011 as "Polk County Family Week" and the important role they play and to encourage all families to unite, honor and celebrate together.

Agenda Item 6. Economic Development Presentation by Harold Gallup, Economic Development Director

Economic Development Director Harold Gallup said economic development is the fabric of the community and a matter of quality of life including education, conservation of natural resources, commercial development, clean environment, recreation and arts. He reviewed the following economic development areas of the city; the commercial area around the mall, the hospital, Longleaf Business Park, and Historic Downtown. He spoke about the importance of tourism and expressed his hope that Legoland will have a positive effect on the community.

Mayor Carter said that we hear about all the jobs that are going to China or India etc. but even so, they produce many related opportunities for jobs in the USA because an overseas product still needs to be shipped here, stocked, sold, installed, advertised and maintained. Mr. Gallup said when he was young most everything was made in America, but not anymore. He thought we needed to get back to the basics. He said when he first got the job in Lake Wales he was stopped by an auto train on his way to work at least three or four days a week. In the last 18-21 months he was not stopped once, indicating where we are economically. He said he is pursuing high tech commerce that produces the highest number of high paying jobs, but not at the expense of the environment or the quality of life in Lake Wales.

ADDENDUM

Agenda Item 6a. Presentation by James Hahn – Spook Hill Monument Project

Mr. Gallup introduced artist James Hahn who presented to the Commission a slide depicting his design for a Spook Hill monument, a project that will be at no cost to the City. Mr. Gallup said that Spook Hill is an area that has been targeted for improvement, and this would make it a high traffic tourist attraction. He said Mr. Hahn was looking for input from the Commission as to whether or not they wish the project to move forward.

James Hahn, 43 West Park Avenue, explained how the Indian spirit, hourglass, and alligator related to the Legend of Spook Hill. He explained how he would use the internet through dedicated websites, mobile phones, I-devices, GPS, virtual reality, website development, and social networking to promote Spook Hill. He also plans to promote Spook Hill through Legoland and various resorts around the country which he said would put Lake Wales on the map. He recognized some of the sponsors he secured for things like development, drafting, materials, and engineering costs. Ms. Hahn showed them a t-shirt they designed to promote Spook Hill and said there would be other promotional items.

Commissioner Rogers said it was a wonderful idea and thanked Mr. Hahn for wanting to do something for Lake Wales without wanting something in return. He said he would help in any way he could.

Commissioner Howell said she would like to buy a t-shirt. She said there were two different traditions as to what happened at Spook Hill but she loves the idea and thinks it is great. Mr. Hahn said he researched back to the conception of the legend and on the website he will be able to inform readers how the legend expanded generationally over the years.

Mayor Carter said he thought it was a marvelous design. He asked City Attorney Chuck Galloway if the promotion of Spook Hill was something they should be cautious about because it is City property. Mr. Hahn said that none of the sponsors asked for anything in return for their support, but rather they have been excited about being involved in the project. Mr. Galloway said that at some point the City will have to grant a license for the location because it will be on City property, but no impediment would be created that he was aware of. He said he saw no issue with capitalizing on the tract that exists there.

Commissioner Thornhill said he was in support of the project as it would be a draw for Lake Wales and he was happy that Mr. Hahn was entertaining the idea.

Commissioner Wojcik said she particularly liked how he incorporated a friendlier version of the Indian ghost, which was reminiscent of the spook in the old photographs.

Mr. Galloway wanted to make it clear that the monument design was copyrighted. Mr. Hahn said it was and that the image was trademarked so it could not be unduly high-jacked.

Mr. Gallup said they will create appropriate easements, the project will meet all city codes, and will go through typical building review.

Commissioner Wojcik asked who would own the monument once complete and who would be required to maintain it. Mr. Hahn said it would be turned over to the City and he thought it could be maintained by various groups following the "adopt-a-highway" model.

The consensus of the Commission was to go forward with the project.

APPROVAL OF MINUTES

**Agenda Item 7. October 4, 2011 Regular Meeting
October 4, 2011 Workshop Meeting**

Commissioner Howell made a motion to approve the minutes for the October 4, 2011 regular meeting, and the October 4, 2011 workshop meeting. The motion was seconded by Commissioner Rogers.

By Voice Vote:

Commissioner Thornhill	"YES"
Commissioner Howell	"YES"
Commissioner Wojcik	"YES"
Commissioner Rogers	"YES"
Mayor Carter	"YES"

The motion carried 5-0.

Commissioner Howell asked why the Consent Agenda portion of the agenda was eliminated and asked that it be included once again. She asked that agenda items 12, 13, and 14 be voted as a consent agenda item because they were "cut-and-dry" and needed no discussion. Mayor Carter said he had questions and comments to make about all three of them. That started a discussion on whether or not there should be a consent agenda as Mayor Carter, who was the one who removed it from the agenda, said he did so because he felt that anything important enough to be on the agenda is important enough to be voted on separately, and because it eliminated public input on them. Ms. Delmar said that the consent agenda was problematic for staff as they have to decide what items should be included, though some items like certain contract renewals, bid proposals, and parade routes are just routine and could easily be included. She added that any item can be removed from the consent agenda for discussion by a Commissioner.

The consensus was to direct the City Manager to bring the Consent Agenda back with the understanding that any item can be removed for further discussion.

OLD BUSINESS

NEW BUSINESS

Commissioner Wojcik asked that they move Agenda Item 12 up.

Agenda Item 12. Hillcrest Elementary – Marietta St. Temporary Road Closure

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The City Commission will consider a request to allow the staff of Hillcrest Elementary School to temporarily close Marietta St north of SR60 on regular school days between the hours of 2:00pm until 3:15pm and on early release days between the hours of 12:25pm until 1:45pm.

RECOMMENDATION

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

1. Approve the temporary road closure of Marietta St. north of SR 60 during the prescribed times.

BACKGROUND

Hillcrest Elementary school is located at 1051 SR60 E in Lake Wales. This location is at the intersection of SR60 and Marietta St. The entry/exit to the parent pick-up lane for Hillcrest Elementary School, which is where students are picked up, is located immediately north of the SR60 and Marietta St intersection.

Additionally, there is a school crossing guard who assists school children cross Marietta St just north of the SR60 and Marietta St intersection.

The traffic turning north off of SR60 onto Marietta St is causing traffic congestion on SR60 and creating a safety issue for the school children walking home and the motoring traffic on Marietta St. This safety issue has been studied by Lake Wales Police Department Staff and presents a concern.

For many years the staff of Hillcrest Elementary has used cones and a golf cart with two employees to block access to Marietta St northbound from SR60. By doing this they effectively created a one way in and one way out loop for parents to pick up their children. This also created a single lane of traffic for the crossing guard to contend with while assisting children in crossing Marietta St. This scenario removed the traffic congestion on SR60 and greatly reduced the risk of danger to the children walking home as well as the motoring traffic.

Although the police department supported this solution to the problem because it substantially improved safety, the City Commission did not officially authorize a temporary road closure. For this reason, the procedure was discontinued after a citizen complained about the inconvenience of not being able to turn onto Marietta St from SR60. Commission authorization of the temporary road closure is being requested at this time. Specifically, Commission authorization is requested to close Marietta St north of SR60 on regular school days between the hours of 2:00pm until 3:15pm and on early release days between the hours of 12:25pm until 1:45pm

With this procedure in place the flow of traffic for Marietta St. is south on Marietta St. in a single lane, a left turn into the parent pick up lane, and exiting by turning right traveling north on Marietta St. Without this procedure in place the parent pick up lane has traffic approaching and entering from Marietta St southbound, SR60 eastbound (left turn off SR60), SR60 westbound (right turn off SR60), and crossing all 5 lanes of SR60 from Marietta St on the south side of SR60.

This temporary road closure can easily be opened for emergency vehicles and leaves room for them to travel or park if needed. Hillcrest Elementary School is willing to resume positioning themselves and cones back out on Marietta St. to prevent motoring traffic from turning onto Marietta St north of SR60. Matt Weaver from FDOT has been contacted about this recommendation and he checked the intersection for any restrictions. Matt Weaver confirmed that since this temporary road closure would not directly affect SR60, we could proceed.

OTHER OPTIONS

Do not approve the temporary road closure.

FISCAL IMPACT

There will be no fiscal impact on the City of Lake Wales.

[End agenda memo]

Troy Schulze, Deputy Chief of Police, reviewed Agenda Item 12.

Ms. Barrows, Vice Principal of Hillcrest Elementary School, said the school was in favor of this change for the safety of the children going to and coming from school.

Mayor Carter asked how the parents would get to Marietta if they can't access it from SR 60. He was told they would have to travel on Lake Shore, Carlton Avenue, or Campbell Avenue to get to Marietta.

OPENED TO PUBLIC COMMENT

David Smith, Babson Park, asked about the additional traffic on Campbell Avenue if cars cannot get to Marietta from SR 60. Troy Schulze said he did not expect additional traffic.

CLOSED TO PUBLIC COMMENT

Commissioner Howell made a motion to approve the temporary road closure of Marietta Street north of SR 60 during the prescribed times. The motion was seconded by Commissioner Rogers.

By Roll Call Vote:

Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Commissioner Thornhill	"YES"
Commissioner Wojcik	"YES"
Mayor Carter	"YES"

The motion carried 5-0.

Agenda Item 8. Ordinance 2011-21, Utilities – 1st Reading

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff is recommending amendment to the Code of Ordinances for utility services.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2011-28 after first reading.

BACKGROUND

On June 21, 2011, staff presented the City Commission with recommendations for changes to utility service fees. Staff recommendations included the following items:

1. A "non-payment" fee of \$25.00 to be charged to all customers scheduled for disconnection due to non-payment. The new fee would be charged to customers with a past due balance in excess of \$30.00 who have either not paid or made payment arrangements by the disconnect date provided on their utility bill.
2. The elimination of the current reconnect fee of \$25.00 during business hours or \$35.00 if after business hours.
3. An increase in the number of extension agreements a customer can request within a six month period.
4. A lowering of the minimum amount a customer is required to pay on a monthly installment agreement from \$50.00 to \$25.00.

A survey of non-payment disconnect procedures for surrounding cities is provided within Attachment A.

FISCAL IMPACT

The implementation of a "non-payment fee" compared to the existing "reconnect fee" is expected to result in fewer delinquent utility customers. Under the current fee schedule, the City routinely has an average of

265 monthly customers scheduled for disconnection. Generally, only 20% incur the reconnection fee. Annually, the City collects an average of \$22,200 from reconnection fees.

Due to multiple variables, such as timely payment of utility bills, assessment criteria for the non-payment fee, and policy changes to extension/installment agreements, staff is unable to provide a reasonable assumption value for the projection of monthly delinquent customers.

However, based on historical payment patterns:

If monthly 265 customers remain delinquent by the disconnect date, annually the non-payment fee would result in \$79,500.

If monthly 74 customers (28% of 265 = 74) remain delinquent by the disconnect date, annually the non-payment fee would result in \$22,200.

If monthly 66 customers (10% of 74 = 66) remain delinquent by the disconnect date, annually the non-payment fee would result is \$19,800.

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-28 by title only.

AN ORDINANCE OF CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 21, UTILITIES, PROVIDING FOR SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE

Finance Director Dorothy Pendergrass reviewed Agenda Item 8. She made an addition to the memo: Wording was put in to allow for the City Manager, or his or her designee, to waive the fees for extenuating circumstances.

Mayor Carter asked how this would impact the written-off debt each year. Ms. Pendergrass said she believed it would significantly lower the debt because customers may be encouraged to pay on time and stay current. If approved, a notice will be sent in the November utility bill. She said the ordinance already states that delinquent customers are required to put down a double deposit but staff has not been able to track and enforce that until now with our new software. Customers will be notified of that also.

Commissioner Wojcik asked if the City Manager would have guidelines to follow when waiving a fee so that it does not create a problem when one customer claims that others received the waiver but they were turned down. Ms. Pendergrass said she would bring forward a draft proposal of guidelines for the second reading. She gave some examples of past customers who had large bills due to leaks that may have qualified for the waiver and said it would basically be done on a case-by-case basis because of extenuating circumstances. Ms. Delmar said it was not a waiver but an extension as the bill will have to be paid.

Commissioner Howell made a motion to approve Ordinance 2011-28 after first reading. The motion was seconded by Commissioner Rogers.

By Roll Call Vote:

Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Mayor Carter	"YES"

The motion carried 5-0.

Agenda Item 9. Ordinance 2011-29, Chapter 21 Amendment, Solid Waste Deposit – 1st Reading

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff is recommending amendment to the Code of Ordinances for solid waste services to include a deposit requirement.

RECOMMENDATION

It is recommended that the City Commission approve Ordinance 2011-29 after first reading.

BACKGROUND

Staff recommends that solid waste customers be required to pay a deposit equal to two months of service at the time that service is initiated. This requirement shall not apply to accounts existing when the ordinance is adopted provided the account remains in good standing.

FISCAL IMPACT

N/A

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-23 by title only.

AN ORDINANCE OF CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 17, SOLID WASTE, PROVIDING FOR SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE OPENED PUBLIC HEARING

Finance Director Dorothy Pendergrass reviewed Agenda Item 9.

Mayor Carter asked for confirmation that the increase would be only for new customers. Ms. Pendergrass said that current customers will be grandfathered in as long as their account is in good standing.

OPENED TO PUBLIC COMMENT

There were no comments from the public.

CLOSED TO PUBLIC COMMENT

Commissioner Howell made a motion to approve Ordinance 2011-29 after first reading. The motion was seconded by Commissioner Rogers.

By Roll Call Vote:

Commissioner Howell	"YES"
Commissioner Rogers	"YES"
Commissioner Thornhill	"YES"

Commissioner Wojcik
Mayor Carter

"YES"
"YES"

The motion carried 5-0.

Agenda Item 10. Resolution 2011-15, Granting Perpetual Easement to Florida Department of Transportation for Improvements on State Road No. 17.

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff requests commission to approve Resolution 2011-15 and authorize the signing of the Perpetual Easement, Hazardous Waste Affidavit and Closing Statement for the donation of property to the Department of Transportation for the purpose of maintaining drainage piping to be installed in the vicinity of Scenic Hwy and First Street.

RECOMMENDATION

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

1. Approve Resolution 2011-15 granting a perpetual easement to the Florida Department of Transportation for constructing and maintaining drainage improvements on State Road No. 17, Section 1609-5209.
2. Authorize the Mayor to execute the easement and other appropriate documents on the City's behalf.
3. Authorize the Public Works Director to execute the Hazardous Waste Affidavit on the City's behalf.

BACKGROUND

The Department of Transportation (DOT) is proposing to install drainage piping in a strip of property located in the vicinity of Scenic Highway and First Street, for which DOT is requesting an easement from the city. This construction will further aid in the conveyance of storm water which collects on Scenic Highway in the vicinity of Osceola and Kissimmee Avenues during any rain event. Historically this area has been known to flood during heavy rain events. Because this is a DOT funded and constructed project, City staff agreed it would be a cost benefit to convey this easement to DOT to allow its staff the ability to operate and maintain its own facilities. The attached documents were sent to the City's attorney for review. He has approved the document form as presented.

Staff is requesting that the commission authorize the mayor to execute the Perpetual Easement and Closing Statement for the donation of property to the Department of Transportation for the propose of maintaining drainage piping to be installed between Scenic Highway and First Street. Staff is also requesting that the commission authorize the Public Works Director to sign the Hazardous Waste Affidavit signifying that to his knowledge there is no hazardous waste in this easement.

OTHER OPTION

Chose not to approve the donation of the property to the Department of Transportation.

FISCAL IMPACT

There is no cost to the city for this project. This is a Department of Transportation funded project

[End agenda memo]

Ms. VanBlargan read Resolution 2011-15 by title only.

**RESOLUTION
CITY OF LAKE WALES RESOLUTION 2011-15; PERPETUAL EASEMENT TO FDOT**

Utilities Project Administrator Sarah Kirkland reviewed Agenda Item 10.

Commissioner Howell asked if FDOT was doing this because it was on Scenic Avenue as there is also poor drainage on North Avenue and nothing is being done. Ms. Kirkland said there are three phases to the project: Phase I, the catch basin they placed on Scenic Highway; Phase II, this agenda item; and Phase III the area of North Avenue.

OPENED TO PUBLIC COMMENT

Jack Neal, 435 East Central Avenue, asked where exactly it was located. Ms. Kirkland showed him on the map. Mr. Neal said he thought the easement had been given to Kosners. Ms. Kirkland said that DOT researched it to make sure there were no issues and it shows up as unimproved. FDOT is also getting with Florida Midland for that easement. Ms. Delmar said that normally when the Commission vacates a right-of-way they reserve the utility easement rights.

CLOSED TO PUBLIC COMMENT

Commissioner Thornhill made a motion to:

1. Approve Resolution 2011-15 after 1st Reading
2. Authorize the Mayor to execute the easement and other appropriate documents on the City's behalf.
3. Authorize the Public Works Director to execute the Hazardous Waste Affidavit on the City's behalf.

The motion was seconded by Commissioner Wojcik.

By Roll Call Vote:

Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Commissioner Howell	"YES"
Mayor Carter	"YES"

The motion carried 5-0.

Agenda Item 13. Write-off Uncollectible Receivable Accounts

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The City Commission is asked to authorize the write-off of uncollectible accounts receivables totaling \$85,223.54 for utility services and solid waste services.

RECOMMENDATION

It is recommended that City Commission authorize the Finance Director to write-off a total of \$85,223.54 in 1,436 uncollectible accounts receivables for utility services and solid waste services for the period of 10/01/08 through 9/30/10.

BACKGROUND

The Utilities Fund and General Fund list accounts receivable as an asset. These amounts are the total unpaid billing of utility and waste disposal services. These Funds also list an offsetting account called Allowance for Uncollectible Accounts, which is an estimate of uncollectible accounts based upon accounts receivable balances past 90 days old. The Allowance for Uncollectible Accounts is adjusted annually by an offsetting adjustment to bad debt expense. If the write-off is approved, each account's balance will be adjusted off and each account will be coded as a write-off. Applications for new service are checked against our current database. If the applicant has a coded write-off account in our system, the applicant must pay the old debt before new service is activated.

Open accounts prior to October 1, 2010 were sent to Penn Credit, the collection agency for the City, on December 15, 2010. Penn Credit will continue to attempt collection efforts relating to these accounts. The combined efforts of Penn Credit and City staff have resulted in the recovery of prior bad debt write-off in the amount of \$13,291.32 and \$9,197.36 for fiscal year 2009'10 and 2010'11, respectively.

Collection recovery realized from the combined efforts of Penn Credit and City staff is equivalent to 8% of the total amount referred to collections (\$22,488.68 recoverable amount/ \$264,063.02 amount referred to collections = 8%). Historically, the average recovery, for fiscal year 2007'08 and 2008'09, without the assistance of an outside collection agency had been equivalent to 4% (\$7,136.47 recoverable amount/ \$177,671.21 uncollectible accounts = 4%)

FISCAL IMPACT

Accounts receivables will be reduced by \$85,223.54 but this will have no impact on the City's bottom line because the amount has been accruing in the Allowance for Uncollectible Accounts.

[End agenda memo]

Finance Director Dorothy Pendergrass reviewed Agenda Item 13.

Commissioner Wojcik asked if a person could sell their house if they have an outstanding utility debt. Ms. Pendergrass said if the title search company contacts them, staff notifies them of any outstanding debt and the City collects when the house is sold. Commissioner Wojcik asked if title search companies are required to ask if there are outstanding utility bills. City Attorney Chuck Galloway said they should ask but there are instances when they don't.

Mayor Carter asked what percentage the collection agency charges and Ms. Pendergrass said 17% of what is collected. She said the last time they went out for bid was in 2008 so they plan on going out for bid again.

Mayor Carter asked if the collection effort stops once the bill is written off. Ms. Pendergrass said the collection agency typically tries to collect only for a year.

Commissioner Rogers said he was concerned with having to write off these debts. He said it seemed to him that the City could collect if the resident is claiming a Homestead Exemption. He wondered if staff

could cross-reference with the county to see if they are getting a homestead exemption. Ms. Pendergrass said if an individual moves out of a house you can only collect from that individual but not from the new person living in the house unless it can be proven that the original owner is getting a direct benefit, though she did not know how the City would prove that.

Commissioner Howell asked if delinquent customers could be tracked down through their social security number if they move to another location. City Attorney Chuck Galloway said the most recent legislation says you can't divulge social security numbers so we wouldn't be able to give it to anyone else. We are required to redact social security numbers.

Commissioner Thornhill said he hoped that the solid waste deposit will help. Ms. Pendergrass said that doubling the deposit for delinquent customers should also help to insure there are sufficient funds to cover the last bill.

Commissioner Howell made a motion to authorize the Finance Director to write-off a total of \$85,223.54 in 1,436 uncollectible accounts. The motion was seconded by Commissioner Thornhill.

By Voice Vote:

Commissioner Howell	"YES"
Commissioner Thornhill	"YES"
Commissioner Rogers	"YES"
Commissioner Wojcik	"YES"
Mayor Carter	"YES"

The motion carried 5-0.

City Attorney Chuck Galloway told the Mayor he needed to go back to Item 11 because a statement needed to be made for the record that Item 11 was considered but not approved at the CRA meeting. Commissioner Howell stated as such.

Agenda Item 11. Acquisition of Property for Gateway Program – Clark's Corner

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The Commission will consider acquisition of property for the Gateway Program. This is one of five potential Gateway Entrance sites that will identify a major entrance into the City of Lake Wales. This is a current element of the Joint Economic Development Strategic Plan adopted by the City of Lake Wales and the Chamber of Commerce.

RECOMMENDATION

STAFF RECOMMENDS THE FOLLOWING ACTIONS BE TAKEN BY THE CITY COMMISSION:

1. Subject to an appraisal that verifies the value of the property, authorize the expenditure of CRA funds in the amount of \$55,000.00 for the acquisition of property owned by Carol C. Taylor, AKA Clark's Corner located at 1130 State Road 60 West.
2. Authorize an expenditure of CRA funds in an amount not to exceed \$6,500.00 for appraisal, legal, title policy, recording cost and other related closing costs.

3. Authorize the Mayor to execute documents required for the acquisition, closing, and recoding of the transaction.
4. Authorize the Mayor to execute documents that will vest the title and property rights with the City of Lake Wales for the Gateway Signage Program.

BACKGROUND

The concept of a Gateway Identification Program has been considered for well over a decade. In 2010 the Joint Committee for Economic Development Strategic Plan identified this element as a "Key Branding" component in the Strategic Plan. The Plan was adopted in March 2011 by the City Commission and the Lake Wales Area Chamber of Commerce. This is a part of a long term effort to "re-brand" the Gateway Entrances to the City of Lake Wales.

The City Attorney has reviewed the title information and will have the appropriate title policy issued to protect the City's interest in the real estate. This is a customary and usual transactional expense.

FISCAL IMPACT

IN THE 2011-2012 BUDGET, THE CRA AUTHORIZED THE ALLOCATION OF MONIES FOR USE IN FUNDING THE GATEWAY ENTRANCE PROGRAM. FUNDING EXISTS FOR THE ACQUISITION OF THIS PROPERTY.

[End agenda memo]

For the record, Agenda Item 11 was considered at the previous CRA meeting but not approved.

Agenda Item 14. Disposal of Surplus Property

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff is seeking approval to dispose of surplus vehicles and equipment identified on the Schedule of Surplus Equipment and post them for auction on GovDeals.com.

RECOMMENDATION

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

1. Authorize disposal of items identified in Schedule of Surplus Equipment 2011.
2. Authorize staff to post surplus vehicles and equipment on GovDeals.com.
3. Determine that any items not purchased at Public Auction be considered as having no commercial value and authorize the disposal of these items by sale as scrap or by disposal as deemed appropriate by the City Manager.

BACKGROUND

In accordance with Sec. 2-476 of the City Code, the City Commission may classify as surplus any of its property that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function or purpose.

Authority for the disposal of surplus property for which the initial purchase price equals or exceeds \$750.00 shall be recorded in the official minutes of the City Commission. Such authority shall include approval of the method of disposal and the estimated value of the property. Authority for the disposal of surplus property for which the initial purchase price does not equal or exceed \$750.00 shall be granted to the City Manager.

Property, the value of which the City estimates to be under five thousand dollars may be disposed of in the most efficient and cost-effective means as determined by the City Commission. In this case, the most practical way to dispose of surplus items will be post the vehicles and equipment on GovDeals.com for auction.

Equipment for which the initial purchase price equals or exceeds \$750.00 is listed on the schedule attached to this memo. This list will be made part of the official record.

The Chief of Police has determined that the 2008 Ford F-350, purchased with forfeiture funds to be used by the SWAT team, is no longer serving its purpose and has been identified as not necessary or practical.

The police equipment listed on the schedule of surplus equipment has exceeded its usefulness.

FISCAL IMPACT

Proceeds from the public auction will be deposited into the forfeiture and general funds.

[End agenda memo]

Police Chief Chris Velasquez reviewed Agenda Item 14.

Mayor Carter asked if the disposal was through Govdeals.com and it was. He asked if it was a good program and Ms. Delmar confirmed that staff is pleased with the results.

Ms. Delmar explained that proceeds from the sale have to be utilized in the same account from which it was taken and if there are no restrictions it will go into the General Fund.

Commissioner Rogers made a motion to:

1. Authorize disposal of items identified in Schedule of Surplus Equipment 2011.
2. Authorize staff to post surplus vehicles and equipment on GovDeals.com.
3. Determine that any items not purchased at Public Auction be considered as having no commercial value and authorize the disposal of these items by sale as scrap or by disposal as deemed appropriate by the City Manager.

The motion was seconded by Commissioner Howell.

By Voice Vote:

Commissioner Rogers	"YES"
Commissioner Howell	"YES"
Commissioner Thornhill	"YES"
Commissioner Wojcik	"YES"
Mayor Carter	"YES"

The motion carried 5-0.

CITY MANAGER'S REPORT

City Commission Tracking Report:

City Manager Judith Delmar asked to bring before them two items:

LITIGATION:

- City Attorney Chuck Galloway outlined the present policy and procedure when the City is served as follows
 - The Mayor receives the complaint
 - It goes to the Risk Manager, who presently is HR Director Sandra Davis
 - The Risk Manager files the complaint with the insurer
 - The insurer either assigns or retains counsel for that purpose and takes care of it.
 - If money is to be expended from the General Fund it is then brought before the City Commission.

- Most litigation is resolved before it gets to the Commission, either by a motion to dismiss or because the cost is covered by our insurance company.

- City Commissioners and litigation.
 - Commissioners do not need to be concerned with foreclosure cases where the city has a junior lien for things like a code enforcement issue. The City Attorney just files the answer on behalf of the City.
 - Commissioners do not need to be concerned with quiet title actions as the City Attorney will file the answer on behalf of the City.
 - Commissioners will not know if an allegation in a complaint is true and would not have the knowledge and information needed to answer litigation questions. It would be better therefore for them not to make a comment that might be detrimental in the future by saying, "No comment because it is in litigation".
 - Commissioners cannot discuss litigation except in a shade meeting for the purpose of litigation strategy and expense which would not be ready for discussion for months or years.

- The question is at what point in the process the Commission would like to be made aware of litigation.

Mayor Carter said it was not their business to comment on lawsuits but the Commission needs to be aware when someone brings an action against the City. He relayed an incident when a resident asked him about a lawsuit against the City of which he had no knowledge.

Commissioner Rogers said a resident accused him of lying when he told the resident the City was not in a lawsuit as he had no knowledge of it. He agreed with the Mayor that they should be notified because once the papers are served it becomes a matter of public record anyway. He agreed that they should not make any comments to the newspapers or to the public because it might jeopardize the lawsuit.

Commissioner Wojcik said she thought they should be notified of litigation though they should not comment on it because they would not be privy to any of the details. Commissioners Howell and Thornhill both said they would like to be notified.

Ms. Delmar said that Commissioners could receive a memo summarizing the issue. Mr. Galloway said that once a lawsuit goes into the city system and is picked up by the insurance company the Risk Manager could put a copy of the pleading into their mailboxes.

WWTP PURCHASE ORDERS

Ms. Delmar said the contractor who was awarded the bid for the wastewater treatment plant rehabilitation forwarded the paperwork to the Finance Director for the preconstruction meeting. There were purchase requisitions for various pieces of equipment that appeared to have been prepared by the City because the

Utility Department's logo was on it. If the City had made those purchases, they would have had to come before the City Commission for approval because they reached that level of cost.

The contractor was questioned about it and said that by doing it that way the City purchases would be exempt from sales tax. So basically, the contractor would have made the purchases but it would have appeared that the City made them. Ms. Pendergrass immediately stopped the process and told them they could not use the City as the purchaser or use purchase orders that resemble that of the City. The contractor said they had not thought it would be a problem because they have done it that way in other cities, but they understood our position and stopped. It was also the project engineer's opinion, Kimley-Horne, that doing it that way would be a good thing because the sales tax savings could be put into a contingency fund for things that might be needed.

Finance Director Dorothy Pendergrass said there are five requirements for the Direct Purchasing Program under state guidelines to qualify for purchases going toward a construction project, but we would not have met them all and would have had city ordinance compliance issues as well as legal issues if audited. Another reason it was halted was because the burden of risk for the wastewater treatment plant would have been shifted from the general contractor to the City for approximately \$637,000 worth of component pieces. So if a problem arose and the component responsible was one purchased by the City, it would have been our responsibility and not the contractor. The contractor, when asked, said the City would get a warranty for them but the City has been in a similar situation before on another project. Ms. Pendergrass said the Commission should know exactly what it is buying and what it is getting. She said that when the bid went out it was made clear that the City would not be doing Direct Purchasing so the contractor was aware of that.

Ms. Delmar said the City used Direct Purchasing in the past but always on less complicated projects like for irrigation equipment at the cemetery or a pipe for a sewer line extension.

Mayor Carter addressed the following concerns:

- He was concerned with the over \$100,000 that the taxpayer will have to pay if we do not go through Direct Purchasing. He was concerned that in the past taxpayers have paid the taxes when they did not need to. He suggested putting together a bill of needed material and components based on what the engineer's recommendations are and certified by him. Then, the city attorney could change the contract wording to state that if something goes wrong with any of those components, the contractor will fix it or replace it and the City will not be held liable.
- Mayor Carter was concerned with the integrity of the company as it seemed to him they were going to keep the savings themselves. He was not sure the City should do business with that kind of firm. He was sure they did that in the past and most likely will do it in the future if they think they can get away with it.

Commissioner Rogers said he was very concerned and thought it took a lot of nerve for the contractor to get a copy of the City's sales tax number and use it, to use letterhead resembling ours, and falsifying documents. He said it was of a suspicious nature and not the way to do business. When he was informed by the city manager, he wanted to cancel the contract right then as he did not think it was an honest mistake, though if it was he apologized.

Commissioner Howell also thought it was suspect as a lot had to be done for it to have been unintentional or accidental. It seemed that the contractor apologized only because they had been caught. She said she was thankful that the City was looking out for us but she was surprised we were still with that company. Ms. Delmar said the contractor never claimed it was an accident. They said they were only trying to save us money because the City requested that any money saved would be put into a contingency fund to go back into the project. Commissioner Howell said if they had told us in the beginning that would have been different but they didn't say anything until they were caught. She did not think they would have told us of all the savings, but rather put it in their own pockets figuring we would not know the difference. Though she had been shocked that we were still going with the company, she said she had figured it was okay because staff thought it was okay.

Mayor Carter said if the City takes the approach that we will finish the project with this company but never use them again, then the company would have no incentive to do the project right. And we may not know there are problems until twenty years down the road.

Commissioner Thornhill said we want to do anything we can to keep the liability off the City. He was in favor of paying the sales tax and then making sure we do a better job on the bid process. He agreed with using Direct Purchasing but with smaller jobs. He said it should be in the contract up front if they are going to use Direct Purchasing. Staff reminded him that the bid document said they couldn't use Direct Purchasing.

Commissioner Wojcik said the engineer has been notified of this so is aware. Ms. Pendergrass said the engineer was present at the meeting with staff and the contractor plus they received two emails keeping them up to date. Commissioner Thornhill wanted to make it clear that the problem is with the contractor and not the engineer, though the engineer has oversight responsibility and he should have known we did not want to use Direct Purchasing because it was in the bid document. Ms. Pendergrass said she was not sure how familiar the engineer was with the full context of what it means for the general contractor and the additional liability the City would be responsible for.

Mayor Carter asked if the City needed to look into criminal intent on their part. The city attorney said not at this juncture because the contractor immediately acknowledged it and stopped. Mayor Carter asked if there was enough confidence in the firm to continue with them. Mr. Galloway said ending the contract would cause significant problems because there was no breach and no basis for termination. The Mayor asked if a fraudulent action was not basis enough. Mr. Galloway said he didn't think so but he'd have to look at the specific terms in the contract. He said the City Manager and Finance Director said they saw no criminal intent but rather an error in judgment as they have done it with other governmental entities.

COMMUNICATIONS AND PETITIONS

Jack Van Sickle, 4060 Lake Ashton, announced the opening of a restaurant called Ashton and invited the public.

CITY COMMISSION COMMENTS

Commissioner Rogers read for the record the following prepared statement.

Addressed to the Lake Wales City Commission:

"I want to address a very serious concern that I have with the so called, Gentlemen's Agreement that was proposed at the last City Commission meeting. First off, under the 1st and 14th Amendments to the Federal Constitution, there shall be no laws, nor Gentlemen's Agreements, that prohibit anyone from "...petitioning the government for a redress of grievance" nor depriving anyone of "due process of law." Under the Florida Constitution, these protections go even further. Not only does Florida's Constitution state that the people have the right "to petition the Government for a redress of grievances," it also states that the people have a right to "instruct their representatives" [Article 1, Section 5]. In addition, my effort to bring the three issues before this commission was proper and legal in that Florida Statute 166.041 requires that all proposed ordinances be in writing, and was properly brought under Article 1, Section 1.02 of the City Charter. These issues were concerns that were brought to me by several of the City's residents. I want to make this very clear; I will not be muzzled by any so called, "Gentlemen's Agreement." I find this attempt to hogtie another commissioner, and hinder the citizens due process right, distressing.

In addition, I find the silence by the staff on this issue bothering, as well. Before I brought these issues before the commission, I contacted the City Clerk and the City Manager, who in turn contacted the City Attorney, to get the proper procedure for bringing an ordinance to amend the

city charter. I followed those directions, and the City's Ordinances, to the "T". I believe that the so called Gentlemen's Agreement that was allegedly proposed to conserve staff resources was just an attempt to stifle conflicting viewpoints. There is no requirement that a sitting commissioner should have a consensus before they bring an issue before the commission.

In closing, I want to stress that requiring a consensus, a Gentlemen's Agreement notwithstanding, before an issue can be brought up by a commissioner is illegal. There is not, and should not be, a requirement that there be a consensus of the commissioners before an issue is addressed. Therefore, I want to make it very clear that I will have no part of any Gentlemen's Agreement that attempts to silence the views, concerns, and initiatives, of another commissioner, or those of the residents, even if those opinions are perceived to be a minority view. I say shame on any city commissioner who states, over and over again, that they want input; but at the same time are to create unofficial policies that would hinder opposing views."

Commissioner Rogers said a friend that knows a lot about the Florida Constitution told him he did no wrong. He said he had been prepared to apologize for doing wrong but as he has not done any wrong, no apology would be forthcoming. He said he would like harmony among commissioners but he intends to represent the citizens and their views.

Commissioner Wojcik said Commissioner Rogers was referring to a request that before the City Manager or City Attorney is directed to write an ordinance, it is first discussed by the Commission to see if it had any chance of being passed. The request was not saying that items on the agenda had to be cleared by them first. The whole point was that an item needed to be brought before the City Commission first. Discussion is great and Commissioners are not denied freedom of speech for themselves or for their constituents. We are saying it is not up to one commissioner to direct staff to spend the time if it will not be passed by the majority of the City Commission. Commissioners are welcome to bring to the Commission anything they feel needs to be discussed.

Commissioner Rogers said he stood on his statement.

Commissioner Thornhill thanked staff for all the work they do and gave a special thanks to Ms. Pendergrass.

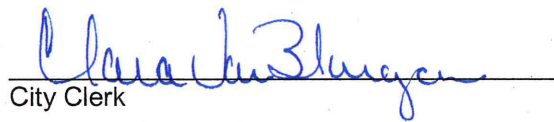
Commissioner Wojcik invited the public to a reception in honor of the new city manager on November 3rd from 4:30 p.m. to 6:00 p.m in the lobby of City Hall.

There being no further business, the meeting was adjourned at 8:28 p.m.



Mayor/Commissioner

ATTEST:



City Clerk