

The regular meeting of the Lake Wales City Commission was held on November 15, 2011 at 6:00 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 Fire Chief Jerry Brown.

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: Terry Leary, incoming City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk; Outgoing city Manager Judith H. Delmar

[Meetings are recorded but not transcribed verbatim]

MAYOR

Agenda Item 5. Proclamation: National Home Care Month; November 2011

Mayor Carter read a proclamation proclaiming November 2011 as "National Home Care Month." Kim Wilson, Jan Baker, and Chris Marlow accepted the proclamation.

Mayor Carter read a proclamation proclaiming December 2, 2011 as "Judith H. Delmar Retirement Day." City Manager Judith Delmar accepted the proclamation.

Status Report on the Estes Electric building:

Kathy Bangle, Asst. Planning and Zoning Director, gave an update on the Estes Electric Building's code enforcement issues by giving a PowerPoint presentation. She gave a brief history of the ongoing years of problems, and said the permit Mr. Estes pulled in September gives him 180 days to complete the stabilization and demolition. Since the permit was pulled they have removed some of the damaged roof and flooring, relocated machines, and dumped construction waste so they are making progress. Once the stabilization is complete the engineers will then have to determine whether the building can be rehabilitated or if they will have to tear it down. Building Official Cliff Smith has been going by on a weekly basis and is satisfied that work is being done as required.

Mayor Carter said the building was a huge blight on the City and was incredibly unsafe, a terrible accident waiting to happen. He was concerned that the city's ordinance did not give the Code Enforcement staff the right tools they need to accomplish anything and suggested having a workshop to address the issue. Ms. Bangle explained that the Code Enforcement team consists of only one officer to actually take care of code issues.

Commissioner Howell asked if they would get updated pictures for the workshop and who would take them. Ms. Bangle said that in this case, the Planning Department took the pictures for Code Enforcement because they were out there taking pictures for their department anyway. She said they take pictures of every case they have and if the Commission has other issues they could include those in the workshop as well.

Commissioner Wojcik recommended including code enforcement issues in the February workshop along with economic development and sign ordinance issues. At that time they could discuss ways of strengthening the ordinance. Ms. Bangley warned them that they had to also be consistent with the Florida Statutes so as not to inadvertently go against them.

Mayor Carter brought up the problem they have been having when property owners clean out things like brush and tree limbs, and the pile of debris sits there for months because they do not know who is responsible for the removal. He asked who was responsible. Ms. Bangley explained that if there is a structure on the property, Florida Refuse will remove it and bill the owner, but if there is no structure there, there is no utility billing address in the system. She said if a licensed contractor does the work they are responsible for the removal. The confusion comes when a resident has someone do the work that is really not a contractor, for example friends or relatives. The City's one code enforcement officer does not know about these type issues so they rely on others to let them know; the more eyes the better. She said that code enforcement issues can be reported through the City's inquiry line or they can email city staff so they can look into it and let the property owner know who to call.

PUBLIC COMMENT

David Smith, Babson Park, said the Estes building is an accident waiting to happen as the building is located next to the housing project. Children could be seriously hurt if they went into the very unsafe building and he believed the city would be held liable if that were to occur. City Attorney Chuck Galloway said the owner, Blue Goose Industries, Inc., would be liable and not the City. Mr. Smith said he thought the City would share the responsibility because the City issued the permit and yet let it go on year after year. He said there was also a strong possibility that the building could catch fire as it is very old and one tossed cigarette could torch it.

CONSENT AGENDA

Mayor Carter pulled Agenda Item 8 and Agenda Item 9 for separate discussion and approval.

Agenda Item 6. Approval of Minutes: November 1, 2011 Workshop Meeting; November 1, 2011 Regular Meeting

Agenda Item 7. RFP for Community Development Block Grant (CDBG) Grand Administration Services

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff is seeking approval of a Request for Proposals for Community Development Block Grant Administration Services

RECOMMENDATION

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

1. Approve RFP #11-341 – Community Development Block Grant Administration Services.

BACKGROUND

The City of Lake Wales has applied for a Community Development Block Grant for fiscal year 2011.

Each time a city applies for a CDBG grant, the Department of Economic Opportunity requires municipalities to prepare and advertise a Request for Proposals for Grant Administration Services.

Staff has prepared Request for Proposals #11-341 for the City Commission's review. After approval, staff will advertise in the Lakeland Ledger and the bid will be posted on the City's website. The bid document will be sent to qualified vendors on the City's vendor list.

[End agenda memo]

Agenda Item 10. Redistricting Committee Appointment

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

A redistricting committee member needs to be appointed to replace a previously appointed member who has moved out of town.

RECOMMENDATION

Staff recommends that the commission appoint a new member, Helen Petersen, to serve on the redistricting committee that will shape the four city commission districts for the next 10 years.

BACKGROUND

At the September 7 & 20, 2011 meetings the City Commission decided to move forward with the redistricting process and appointed five members to serve on the Redistricting Committee. Rev. James Cleare, who was appointed by Commissioner Howell, has moved out of town and is unable to serve. Commissioner Howell has recommended Helen Petersen to replace Rev. Cleare. The other four members are Andrea Fitterling, Cliff Tonjes, Linda Kimbrough and Jack Brandon.

OTHER OPTIONS

Do not appoint Helen Petersen but appoint someone else.
Do not fill vacancy.

FISCAL IMPACT

none

[End agenda memo]

Agenda Item 11. Edward Byrne Memorial State and Local Law Enforcement Assistance Grant

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The City Commission will consider submitting an application for an Edward Byrne Memorial State and Local Law Enforcement Assistance Grant to fund in-car video camera systems in the amount of \$7,151.

RECOMMENDATION

Staff recommends that the City Commission authorize the Police Department to apply for funding through the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant.

BACKGROUND

Since 1999, the Police Department has received funding from the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program. Since that time, the Police Department has utilized this funding to create numerous community programs as well as purchase needed equipment to enhance public safety.

This year the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant award amount is \$7,151.00 and if approved would be included in the 2011/2012 budget. Match is not required with this program.

The Police Department proposes to use these funds to purchase in-car video camera systems. This equipment will allow law enforcement officers to effectively document traffic violations and enforcement activities. Additionally, it will provide valuable evidence that will enhance criminal prosecutions.

OTHER OPTIONS

The Commission may choose not to authorize application for and accept the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant.

FISCAL IMPACT

The Finance Department has reviewed this application and, beyond future routine maintenance costs, found no fiscal impacts because no matching funds are required.

[End agenda memo]

Commissioner Howell made a motion to approve Consent Agenda Items 6, 7, 10 and 11. The motion was seconded by Commissioner Rogers.

By Voice Vote:

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

The motion carried 5-0.

Agenda Item 8 Invitation to Bid for #11-340 Force Main Cleaning (Pigging)

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff requests commission approval of a bid document prepared to obtain bids for an annual contract for a qualified vendor to perform cleaning and restoration of force mains to maximum flow capacity.

STAFF RECOMMENDATION

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

1. Approve Bid Document #11-340 Force main Cleaning (Pigging)

BACKGROUND

Several of the larger force mains throughout the city require annual cleaning due to the low flow conditions. The low flow problem primarily exists due to the lack of development in the service area for which these force mains have to service. Sediment such as sand, plastics and paper tend to settle to the bottom of the pipe due to the low velocities of the liquid pushing the sediment. The method proposed for the cleaning of the force main is called the progressive poly pig procedure, hence the name pigging. At this time, staff is seeking Commission approval of this bid document

\$48,000.00 has been allocated in the FY11'12 Wastewater M & R Lines & Mains for the cleaning of these force mains. The monies to fund this necessary maintenance activity are from operating revenue.

[End agenda memo]

Agenda Item 9. Invitation to Bid for #11-226 Sewer Line Infiltration Repairs

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Staff requests commission approval of a bid document prepared to obtain bids for an annual contract for a qualified vendor to provide sewer line infiltration repairs through the slip lining method.

STAFF RECOMMENDATION

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

1. Approve Bid Document #11-226 Sewer Line Infiltration Repairs.

BACKGROUND

There have been several instances in the past few years in which residents throughout the city have experienced problems with the back-up of the sewer lines due to the lines being broken due to age or obstructed due to root intrusion. This bid document would allow staff to seek a qualified vendor to provide these necessary repair services. At this time, staff is seeking Commission approval of this bid document. \$250,000.00 has been allocated in the FY11'12 Wastewater Capital Improvement Plan for these repairs. The monies to fund these repairs are from operating revenue.

[End agenda memo]

Mayor Carter asked that Agenda Items 8 and 9 be discussed and voted on together. He had concerns with the City not using the sales tax exempt status it is entitled to for the purchase of materials being used by contractors so taxpayers don't have to pay unnecessarily. He said he thought the City Commission had already given direction to the City Attorney to craft contracts in such a way that the bidder would give

the City a list of materials they would need. The City then would buy those items using the tax exempt status, but the contractor would still be liable. The City would not be liable because it would be purchasing what they wanted.

Utilities Project Administrator Sarah Kirkland explained that there would be no sales tax on Agenda Item 8 for the Piggings because it is a services and not a purchase. She said she could change the bid for Agenda Item 9 if the Commission wished.

Commissioner Wojcik said she believed the problem was that if the City bought the item directly using the exemption, the City would then take on the liability for those products. The City would need to determine if it was willing to take on that liability if the product did not work. The Mayor said he thought wording could be put into the bid so vendors would have to accept the liability and not transfer it to the City.

Finance Director Dorothy Pendergrass commented on the following:

- **Wastewater Treatment Plant:** She said the City backed away from the direct purchasing program because the City did not want to accept the liability.
- **The General use of the tax exemption status:** She said it was completely legal for the City to use the tax exemption status when purchasing items used by vendors for city business as long as the five requirements set by the state are met. If the Commission requests to go that route, staff can bring changes for the purchasing policy back to the Commission. In order to do that staff will need to know the following:
 - If the Commission wants the tax exemption to apply to all items purchased.
 - If not, when it should apply, for example, only on large purchase items
 - If only on large purchases, what threshold or dollar amount would apply.

Staff could work out the cost benefit, if the savings are worth taking on the extra liability, and the cost for additional staff spent in purchasing the items rather than the vendor doing it.

Commissioner Wojcik recommended that staff put into the Commission memo their recommendation based on the type of project and what the city's liability would be. She said the main issue was the liability and though the Commission always wants to save money, some projects would be more conducive to that than others. She said if the vendor does the purchasing and has to pay the sales tax the extra cost will be reflected in the bid. If the City makes the purchase, the City will save on the taxes but will have to accept the liability.

Commissioner Thornhill said that going with the tax exemption may not always be the cheapest alternative because many times vendors buy equipment in bulk and get a better price for them than using the exemption. He said that most vendors he knows would not be willing to take on the liability for equipment they did not personally purchase and he believed that having that as a requirement would mean less bids for the City.

Commissioner Rogers said he was always in favor of saving the City money and because they owe it to the community, he thought it was worth exploring all possibilities. He said that the intent of the law is that if the City is the purchaser, we would have to take on the responsibility for the product. We can't walk on both sides of the street. We have to get on one side or the other.

Commissioner Howell said staff would have to let them know if the benefit to the city was greater than taking on the liability because the Commissioners would not know that. If direct purchasing would hurt the City, the Commission needs to be made aware of that before the vote.

Ms. Pendergrass said that staff's recommendation would have to be based on three components and then the Commission would have to direct them as to what they want done. The three components are:

- The dollar amount for the materials
- How much savings there would be
- How much staff time would be needed for the bidding process and for the purchase of materials

- What liability the City would be taking on

Mayor Carter asked City Attorney Chuck Galloway if they could make the contract say that the vendor takes on the liability if the City purchases the item from the list provided by the vendor. Mr. Galloway said they could contract in that fashion but the problem is that even if the vendor specifies a list of items, the City's purchasing ordinance requires that purchases have to go out for bid. What they get will not necessarily be the exact item on the list. Staff could for example buy green pipes and require the vendor to accept liability for it, but many vendors will not do that. Mayor Carter said he thought there should be ways to get past that. Mr. Galloway said that even if the vendor lists the specs for a purchase, there is no telling what would come back once it went out for bid, or whether the supplier would be willing to supply that part for what the City is willing to pay. Commissioner Wojcik summarized that the City therefore would not only have to bid out the construction for a project but also for the purchase of any items the City would buy directly for the project, which would result in getting bids for similar and not necessarily the identical item. Mr. Galloway said that was a fair analysis.

Commissioner Howell recommended that staff discuss the best choices and then present them to the Commission at a later date. Mayor Carter said the two issues are the liability and the cost savings and he did not know when the threshold between the two is reached and the liability issue outweighs the savings. The Commission will soon have to decide what they will do about the half a million dollar shortfall next fiscal year, so money should not be wasted. It was recommended by Commissioner Thornhill that two options go out for each bid, one for if vendor purchases and one for City purchases. Mayor Carter said staff needs to also work on a common bid process so they are always looking at the same thing.

Commissioner Howell recommended voting on the two agenda items before them as was recommended by staff and work on the purchasing policy later.

Commissioner Howell made a motion to approve Consent Agenda Items 8 and 9. The motion was seconded by Commissioner Rogers.

By Voice Vote:

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

The motion carried 5-0.

OLD BUSINESS

Agenda Item 12. Ordinance 2011-30, FY2010-2011 Budget Amendment #5 – 2nd Reading & Public Hearing

The full staff memo is incorporated into the minutes.
[Begin agenda memo]

SYNOPSIS

The Commission will consider adoption of the fifth and final amendment of the FY10'11 Budget that was adopted on September 21, 2010.

RECOMMENDATION

It is recommended that the City Commission adopt Ordinance 2011-30 after second reading and public hearing.

BACKGROUND

Ordinance 2010-19 estimating revenues and appropriating funds for Fiscal Year 2010-11 was adopted by the City Commission September 21, 2010 and amended by Ordinances 2010-32, 2011-05, 2011-07, and 2011-14. We are presenting for second reading and public hearing the final amendment of Ordinance 2010-19 to modify the estimates of revenues and appropriations budgeted in various funds. Exhibits A and B and supporting attachments provide the detail for the proposed amendment.

This budget amendment is based on preliminary unaudited financial reports for the fiscal year ending on 9/30/10. As can be seen in the following chart, with the exception of an adjustment in the Special Revenue Funds, there is neither an increase nor decrease in the total revenues and expenditures budgeted. This is because all amendments outside the Library Fund are accomplished by reallocating surplus appropriations in some departments to cover shortfalls elsewhere.

Revenues & Balances Fwd	Increase(Reduction)
General Fund	0
Special Revenue Funds	50,060
Debt Service Fund	0
Capital Projects Fund	0
Airport Fund	0
Utility System Fund	0
Total Increase(Reduction) of Revenues & Balances Fwd	50,060
Appropriated Expenditures & Reserves	
General Fund	0
Special Revenue Funds	54,702
Debt Service Fund	0
Capital Projects Fund	0
Airport Fund	0
Utility System Fund	0
Reserves	(4,642)
Total Increase(Reduction) of Appropriated Expenditures & Reserves	50,060

The proposed budget amendment increases the City's total budgeted expenditures by \$54,702. Because there is an offsetting increase in revenue of \$50,060, reserves are reduced by only \$4,642. Thus, there is a net increase in appropriated expenditures and reserves of \$50,060 (from \$42,561,708 to \$42,611,768).

Items adjusted in this amendment include:

Police Dept - increasing M&R Radios (+1,120) and IT Equipment (+7,771) for repairs	8,891
Recreation Facilities - increasing Capital Outlay for grant-funded lighting	198,327
Various General Fund Departments - reducing surplus appropriations	(335,079)
Various General Fund Departments - increasing appropriations to cover excess	127,861
Special Rev Fund - Library - increasing appropriations to cover excess expenditures	52,566
Special Rev Fund - CRA - reducing surplus appropriations in Community Policing (-	(9,444)
Special Rev Funds - CRA - increasing appropriations to cover excess expenditures in	9,444
Special Rev Funds - Law Enforcement Grants - increasing appropriations to cover	2,136
Utility Fund - Water Division - increasing M&R IT for repairs due to lightning damage	1,883
Various Utilities Fund Departments - reducing surplus appropriations (reappropriating	(31,883)
Various Utilities Fund Departments - increasing appropriations to cover excess	30,000
Total Expenditure Amendment	54,702

OTHER OPTIONS

None. This is a required housekeeping amendment that must be adopted no later than November 30, 2011.,

FISCAL IMPACT

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-30 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING ORDINANCE 2010-19 AS AMENDED BY ORDINANCE 2010-32, 2011-05, 2011-07 AND 2011-14 TO MODIFY THE ESTIMATES OF EXPENDITURES FOR THE OPERATION OF THE SEVERAL DEPARTMENTS OF SAID CITY FOR THE 2010-2011 FISCAL YEAR AND TO MODIFY THE APPROPRIATION OF FUNDS RAISED AND COLLECTED FROM ALL SOURCES SET FORTH IN THE ESTIMATE OF REVENUES FOR SAID FISCAL YEAR; REPEALING ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

Finance Director Dorothy Pendergrass reviewed Agenda Item 12.

OPENED PUBLIC HEARING

There were no comments from the public.

CLOSED PUBLIC HEARING

Commissioner Thornhill made a motion to adopt Ordinance 2011-30 after second reading and public hearing. The motion was seconded by Commissioner Howell.

By Roll Call Vote:

Commissioner Thornhill

"YES"

2011-700

Commissioner Howell
Commissioner Rogers
Commissioner Wojcik
Mayor Carter

"YES"
"YES"
"YES"
"YES"

The motion carried 5-0.

Agenda Item 13. Ordinance 2011-31, Disposal of Surplus Library Books and Materials – 2nd Reading & Public Hearing

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The City Commission will consider establishing a method for disposing of surplus library materials.

RECOMMENDATION

Staff recommends that the City Commission adopt, after second reading and public hearing, Ordinance 2011-31 establishing a method for disposing of surplus library materials.

The City Commission approved Ordinance 2011-31 after first reading on November 1, 2011.

BACKGROUND

The Lake Wales Public Library strives to serve the community with a current and relevant library collection, including materials in all formats. Under the guidelines of the Lake Wales Public Library's Collection Development Policy, librarians select and add new materials while discarding outdated, damaged or unpopular items.

The Lake Wales Public Library's city budget provides approximately 65% of their annual books and materials funding. The Lake Wales Library Association, (friends of the library), a 501(c)3 non-profit organization established in 1957 to support the effort of the Lake Wales Public Library provides 35% of the library's annual materials budget.

The Lake Wales Library Association's financial support includes funds collected from members and income from trust accounts established to support their efforts. Additionally, this group accepts donations of books and materials to benefit the Lake Wales Public Library.

Donations are evaluated by librarians to determine their worth in the collection; donations not accepted into the Lake Wales Public Library's circulating collection remain the property of the Lake Wales Library Association and are sold in their used book store.

In an effort to codify the disposition of outdated, damaged or unpopular items purchased with city funds, this ordinance would allow professional library staff to withdraw materials that meet the guidelines established in policy and donate these withdrawn items to the Lake Wales Library Association for sale in their used books store.

FISCAL IMPACT

Proceeds from the sale of discarded library materials will be donated by the Lake Wales Library Association to the Lake Wales Public Library.

OTHER OPTIONS

None. The other options for disposal that are authorized by city code do not specifically apply to the disposition of library books and materials, nor do they address the use of proceeds from the sale of such materials.

[End agenda memo]

Ms. VanBlargan read Ordinance 2011-31 by title only.

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE IV. PROCUREMENT OF PROPERTY AND SERVICES, TO ESTABLISH A METHOD FOR DISPOSING OF SURPLUS LIBRARY MATERIALS; PROVIDING FOR AN EFFECTIVE DATE.

OPENED PUBLIC HEARING

There were no comments from the public.

CLOSED PUBLIC HEARING

Commissioner Howell made a motion to adopt Ordinance 2011-31 establishing a method for disposing of surplus library materials after second reading and public hearing. 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.

NEW BUSINESS

Agenda Item 14. Write-off of \$4,477.51 Paid to Progress Energy under Emergency Purchase Procedures

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

Commissioners will consider a recommendation to write off of an obligation created under emergency purchasing procedures during 2009 for \$4,477.51.

RECOMMENDATION

It is recommended that City Commission authorize the Finance Director to write off an existing liability of \$4,477.51 paid to Progress Energy during 2009.

BACKGROUND

On June 26, 2009 the City of Lake Wales administrative office received a telephone call from Ms. Laura Ryan, a resident of the Brookshire Subdivision. Ms. Ryan notified city staff that the streetlights for the Brookshire Subdivision had been turned off. Staff attempts to contact Larry Szrom, a representative of the Brookshire Homeowners Association, were unsuccessful.

The street lighting outage jeopardized public safety. Based on the issue of public safety and welfare relating to outage of streetlights on public owned streets, Tony Otte, City Manager, authorized payment of the outstanding balance of \$4,477.51 to Progress Energy. The payment was applied to account number 58960 24057, the account for Brookshire HOA.

On June 29, 2009, Mr. Szrom contacted city staff and stated the reason the Progress Energy bill had not been paid was due to insufficient funds within the Brookshire Homeowner Association.

On July 6, 2009, an invoice was sent to the Brookshire Homeowner Association requesting reimbursement no later than July 20, 2009. As of November 15, 2011, payment has not been received by the City.

On July 20, 2010, the City Commission approved Resolution No. 2010-10 establishing the initial assessment rate for the Brookshire Street Lighting District. Within Section 3(c) of the Resolution, the electric costs relating to the street lighting services for the Brookshire Street District will be funded by available City revenues other than street lighting assessment proceeds.

The developer of the Brookshire Subdivision leased decorative lighting for the subdivision, leaving the Brookshire HOA responsible for payment. From February of 2007 until September of 2010, the street lighting electric costs owed by the Brookshire Homeowner Association were estimated as \$4,493.50, a cost normally paid by the City for city streets.

Effective 10/01/10, the creation of the Brookshire Street Lighting District has provided an equitable system to insure the equipment lease costs associated with the street lighting within the district is funded by the home owners and shifted the payment of the street lighting electricity costs to the City.

Staff is recommending the write-off of the existing liability of \$4,477.51 because it would be approximately equal to the \$4,493.50 in normal costs the City would have incurred if the unusual circumstances of the subdivision's decorative lighting had not existed.

FISCAL IMPACT

Accounts receivable will be reduced by \$4,477.51.

[End agenda memo]

Finance Director Dorothy Pendergrass reviewed Agenda Item 14.

Commissioner Carter asked what procedures were in place to make sure it won't happen again. Ms. Pendergrass said that the problem stemmed from the use of the decorative lights and no other subdivision has that type lighting issue. She said they changed the ordinance so it would not happen again.

Commissioner Howell made a motion to authorize the Finance Director to write off an existing liability of \$4,477.51 paid to Progress Energy during 2009. The motion was seconded by Commissioner Rogers.

By Voice Vote:

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

The motion carried 5-0.

Agenda Item 15. Special Counsel for Eminent Domain Matters Related to the "C" Street Sewer Replacement Project

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

RECOMMENDATION

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

1. Approve retaining the Bryant Miller Olive law firm as Special Counsel for purposes of matters of Eminent Domain related to the "C" Street sewer replacement project.
2. Authorize the Mayor to execute the firm's engagement letter for providing its services for this project.

BACKGROUND

The "C" Street Sewer Project includes replacement of much of the existing sewer infrastructure in the northwest area of the community. Integral to the project is the acquisition of easements in which the replacement sewer lines will be installed. The engineering plans for the project have been prepared by Envisors, inc., and the plans indicate the 207 parcels over which easements are required.

It is anticipated that many of the Owners of the parcels over which easements are required for this sewer upgrade will agree to act cooperatively with the City for purposes of facilitating this project, but in any acquisition project of this nature, there will be instances in which the City will be required to exercise its right to take the needed easements by Eminent Domain in order for the project to be accomplished for the benefit of the community.

Eminent Domain is a complex proceeding before the Courts and requires counsel versed in this very specialized area of legal practice. The City of Lake Wales has a long and continuing relationship with Bryant Miller Olive as its bond counsel and the firm also has numerous attorneys who are well versed in this area of practice which will be required in order to complete this project. The firm's lead attorney for this project will be Susan H. Churuti, Esquire, who has been practicing in this area of specialty since 1981. Her Curriculum Vitae, together with those of the other attorneys who may participate in this project, is provided with the engagement letter appended to this Memorandum.

FISCAL IMPACT

The Bryant Miller Olive firm has agreed to provide its services as Special Counsel for a negotiated fee of \$265.00 per hour. This hourly fee is currently in effect for the firm's representation of other governmental units in Florida as shown on the last page of the information appended to this Memorandum. There is no necessity of a competitive bid process for this representation due to the continuing contract for representation which the City has with this firm. I have dealt with this firm many times over the years and am very confident that the City's needs will be well and ably met for this project by this firm.

There is no manner in which to estimate what the total costs of this representation will be. It will be necessary to first determine how many of the easements can be acquired cooperatively before there is any possibility of determining how many parcels must be taken by utilization of Eminent Domain proceedings.

OTHER OPTIONS

None; Special Counsel for this portion of the sewer replacement project cannot be dispensed with.

[End agenda memo]

City Attorney Chuck Galloway reviewed Agenda Item 15.

Commissioner Rogers asked if they could use adverse possession because some of the lines have been there since 1920. Mr. Galloway explained that the new lines were not going in where the old lines were so the existing lines can continue to work while the new line is being connected.

Mayor Carter said it was like writing out a blank check because the charge is by the hour. He asked the city's attorney if he had any idea of how much time might be needed. Mr. Galloway said there was no way of giving an estimate because it depends on how many residents go through a law firm to try to get a better deal than what is being offered by the City, and he anticipates that law firms will be soliciting residents in that area. He said the City is responsible for paying not only its own fees but the owner's fees as well.

Tom Drage from the Bryant, Miller and Olive law firm's office in Orlando, gave some background. He said city staff should try to obtain right-of-ways to the property in the most inexpensive and efficient way possible and hopefully most of them will be obtained without having to go through the litigation process. He said his firm represents a lot of local governments and has the expertise to take care of those residents who do not cooperate and it will be done in the most efficient and inexpensive way.

Commissioner Rogers said that if the City is not careful, the money for the C Street sewer project could be eaten up by legal fees, unless there is a separate fund for that. Mr. Galloway said it was all part of the project cost and it could be expensive, but before the project can go forward with any installation, the easements to all 207 parcels have to be acquired. He said Ms. Kimbrough will be getting as many as she can through cooperation. Once the rest are earmarked, a resolution will be brought back and the Commission will be kept informed throughout the process. Commissioner Rogers said he hopes Ms. Kimbrough can do a good selling job because the sewer needs to be fixed and without their cooperation we may find ourselves between a rock and a hard place.

Commissioner Wojcik asked if there was a prescribed procedure limiting the amount paid to the market value of the property. She said that after all, the City would not be purchasing the property but only acquiring access for under their property. Mr. Drage said each property will be appraised and the only problem will arise if the amount the City is offering is less than the appraisal. Commissioner Wojcik said she thought it was important for the home owners to know that there is a limit to the amount the City can pay for those rights-of-ways because there is a formula that is used to assess the amount. Everyone would be paid the same depending on the square footage of property the City will need to use. Commissioner Thornhill added that they also need to realize that the project is for their benefit. Mr. Galloway said they will need the cooperation from the community to make the project happen.

PUBLIC COMMENT

William Moure, NAACP, suggested that some of the area community groups might work with the owners to get their cooperation, but it will need to be done tactfully as the problem has gone on for years and the residents are suspicious of city government.

Commissioner Thornhill made a motion to appoint to:

1. Approve retaining the Bryant Miller Olive law firm as Special Counsel for purposes of matters of Eminent Domain related to the "C" Street sewer replacement project.
2. Authorize the Mayor to execute the firm's engagement letter for providing its services for this project.

The motion was seconded by Commissioner Wojcik.

[End agenda memo]

By Voice Vote:

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

The motion carried 5-0.

Agenda Item 16. Discussion of Preliminary Financial Statement for Fiscal Year Ending September 30, 2011

The full staff memo is incorporated into the minutes.

[Begin agenda memo]

SYNOPSIS

The preliminary financial statements report revenues received and expenditures made during fiscal year 2010'11.

The unaudited financial statements for the Year Ending September 30, 2011 are presented to the City Commission for review. Revenue and expenditure budgets have been adjusted to reflect changes through Budget Amendment #4.

Effective June 2, 2011, all department directors received notice of a freeze on spending and hiring from the City Manager. It was necessary to bring spending to a minimum for the remainder of this fiscal year.

Analysis of Cash & Investment Changes:

	GENERAL	SPECIAL REVENUE	UTILITY SYSTEM	TOTAL
Cash & investments YTD 2009-2010*	3,126,577	1,844,120	110,448	5,081,145
Cash & investments YTD 2010-2011*	2,532,858	1,367,711	739,892	4,640,461
CHANGE	-593,719	-476,409	+629,444	-440,684

General Fund cash and investments in comparison to prior year showed a reduction of \$593,719. Essentially, 641,228 (108%) of this reduction is due to the following items:

- Reduction in ad valorem tax receipts compared to prior year of \$442,901.
- A/R – Florida Energy Grant for \$198,327. This money will be returned to the General Fund once the grant money is received.

Special Revenue Fund cash and investment in comparison to prior year showed a reduction of \$476,409. Essentially, \$701,142 (147.17%) of this reduction is due to the following items:

- Reductions in CRA ad valorem tax receipts compared to prior year of \$361,596.
- Reduction in CRA County Tax Increment receipts compared to prior year of \$339,546.

Utility Fund cash and investments in comparison to prior year showed an increase of \$629,444. Essentially, 627,708 (99.72%) of this increase is due to the following items:

- Increases in charges for services of \$180,563.
- Reduction in operating expenditure reductions totaling \$477,145, excluding depreciation expense. During 2009'10, the City contributed \$250,000 towards the Lake Belle drainage project that was constructed by Polk County. This one-time expense was classified as an operating expenditure rather than capital outlay due to the nature of the intergovernmental agreement. Reduction in wastewater operating expenditures of \$87,228 mainly due to reduced repair and maintenance costs. Reduction in utility billing of \$62,889 mainly due to \$34,939 vacant staff positions and \$27,810 increase in the allocation to solid waste services.

Summary of Fund Balance/Net Assets:

General Fund (page F-1):

Preliminary general fund balance is estimated as \$2,913,562 which is above the budgetary expectation of \$2,839,870 (\$73,692).

Special Revenue Funds (page F-1):

Preliminary special revenue fund balance is estimated as \$1,466,670, which is below the budgetary expectation of \$1,522,516 (\$55,846). The reduction in fund balance over expectation is mainly due to CRA transfers to other funds relating to future capital projects. While a budget amendment to adjust beginning fund balance will be performed with the first budget amendment for fiscal year 2011'12, no additional corrective action is necessary at this time.

Debt Service Fund (page F - 1):

Preliminary debt service fund balance is estimated as \$1,951,563 which agrees with the budgetary expectation of \$1,951,563.

Capital Project Fund (page F - 1):

Preliminary capital project fund balance is estimated as \$491,232 which is below the budgetary expectation of \$495,792 (\$4,560). While a budget amendment to adjust beginning fund balance will be performed with the first budget amendment for fiscal year 2011'12, no additional corrective action is necessary at this time.

Utility System Funds:

Preliminary utility system fund balance is estimated as \$4,540,565 which is above the budgetary expectation of \$4,008,792 (\$531,773). The increase in fund balance over expectation is mainly due to capital project expenditures which were expected in fiscal year 2010'11 but will not be realized until fiscal year 2011'12. While a budget amendment to adjust beginning fund balance will be performed with the first budget amendment for fiscal year 2011'12, no additional corrective action is necessary at this time.

[End agenda memo]

Ms. Pendergrass reviewed Agenda Item 16.

Commissioner Howell made a motion to approve the Preliminary Financial Statement. The motion was seconded by Commissioner Rogers.

By Voice Vote:

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

The motion carried 5-0.

CITY MANAGER'S REPORT

- City Commission Tracking Report:

Commissioner Carter said he thought the completed tracking report projects were to be listed at the end. Ms. Delmar said there was one or two that should have been moved.

Commissioner Carter asked for an update on the gymnasium repairs. Economic Development Director Harold Gallup gave the following update information:

- The punch list was reviewed at their meeting and there were approximately seven items identified on the contractor's list and three or four items staff is working on.
- The gym will be opened on November 18th and stay open through the Thanksgiving holiday so kids in the neighborhood have use of it while out of school.
- It will be closed from December 3rd through 7th for the making of the infomercial.
- The gym will open back up on December 8th.
- Staff is very pleased with the work. The contractors are ahead of schedule and did an excellent job.
- The gym is scheduled to be closed one day a year for an annual inspection so maintenance issues can be identified before it becomes the kind of problem they experienced due to neglect.

Commissioner Wojcik asked if the project was within budget. Mr. Gallup said that determination would have to wait for the final report, but he believed it may be within budget or a few dollars over.

- Charter Amendment Report by City Clerk

City Clerk Clara VanBlargan gave an update on the Charter Amendment petition brought to the City that would change Commission and Mayor terms from four to two years. She said she verified the signatures and the petition met the requirement for 10% of last year's registered voters and therefore would be included on the April ballot.

COMMUNICATIONS AND PETITIONS

Bob Kelly, Realtor, asked that the following be added to the tracking report:

- Foreign Trade Zone resolution: Mr. Kelly reported that a resolution was being brought forward in Tampa for a foreign trade zone that would include Polk County. This would be an economic development tool for the area to bring in companies who are looking for locations in connection with the CSX project. Economic Director Harold Gallup said the two-year old project will be going to Tampa, and Lake Wales will be in Zone 79. He said they are on top of it and will be working with CFDC.
- Fiber optics: Mr. Kelly explained how fiber optics would help the downtown area with communication, which presently is lousy, and would connect police, fire, school systems, and the hospital into one network. Mr. Gallup stated that Broad Band Service had been looked into before and several cities have abandoned it because of cost. There are cities like Winter Haven that are doing some service but Winter Haven has the advantage because the old Verizon facility has all of the pipe capacity in-place. The Longleaf Business Park does have fiber service. We can revisit this issue with IT. Mayor Carter recommended having this as a workshop item.

Jack Van Sickle, 4060 Ashton Club Drive, said that while he was collecting signatures for the petition, he discovered that the majority of people he spoke with also wanted the issue of single-member districting placed on the ballot. He said the City Commission should honor the people's wishes and asked Commissioner Wojcik, as representative for that area, to make a motion to put single member districting on the ballot so the voters can decide.

Commissioner Rogers asked for clarification on the motion to be made. Mr. Van Sickle said this would be the same ordinance previously brought to the Commission to put single-member districting on the ballot. Commissioner Rogers said he did not believe the Commission could take action at that time but it could request that it be put on the next agenda.

Following a discussion, the consensus was to put the single-member districting item on the next agenda for consideration.

Mimi Hardman, 300 S. Lake Shore Blvd., said that the community wanted to be more involved in what the Spook Hill sign would look like because it is a historical legend that will have an impact on the community. She said she told the artist, who she thought was very good, that she would like to look at the proposed drawing to give some input, but he never brought it to her. She could not make the last City Commission meeting and so was not able to give her input at that time, but if she had she would have said she thought the image was frightening. She asked that there be further research and the issue revisited, giving the community an opportunity to give their views. She said if the Commission doesn't want to pay for the sign, she would raise the money.

Commissioner Rogers said the consensus of people who talked with him said they'd like to have input.

Commissioner Howell said she would like to get the community's ideas.

Commissioner Wojcik said the city was not paying for the sign and so she didn't think we could regulate its content. Asst. City Planner Kathy Bangle said the sign would be on city property and the city would be maintaining it. She said the city cannot regulate content on commercial signs for advertisements but this will be a city landmark on city property so she does not believe it needs public input on its design. The content is "Spook Hill." City Attorney Chuck Galloway said it is not a question of regulation of content simply because the sign is not commercial in nature and the City owns the location of where it will be. The City owns the property and certainly has control over what it will allow to be put there. Commissioner Wojcik said that when the artist talked to her, she told him it should be a community decision and not an individual one. She was in favor of having a public hearing to get the community's input and then determine what to do.

Judy Delmar said if they really want to get the community's opinion, they could take an informal survey through the Lake Wales News or put it on the April ballot.

Mayor Carter said the consensus seems to be that there needed to be more public input regardless of what the sign looks like. Because of the concerns, the public needs to be involved in the final piece of artwork that we put out there. He said a special meeting could be called just for that. Mr. Gallup reminded them that the artist got the go-ahead from the Commission at the last meeting for the design that is hanging in the lobby and was in the process of raising money. He asked the Commission to make the tentative statement saying "please stop your work at this time until we have resolved this issue." Mayor Carter said we need to tell him exactly those words because that is what he is hearing in the consensus that we need to revisit this.

CITY COMMISSION COMMENTS

Commissioner Howell asked if a fee, fine, or rent can be charged to residents who own buildings that are left empty. City Attorney Chuck Galloway said there is no basis in which the city can levy what in essence

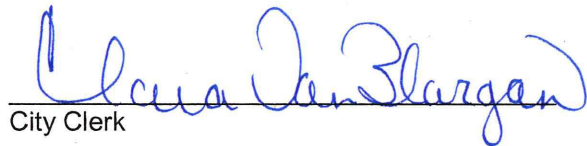
would be a tax, as that would be unconstitutional, though they can be penalized through code enforcement action. Ms. Delmar said it would not be a penalty for an empty building but for one in disrepair.

Commissioner Thornhill wished everyone a happy Thanksgiving.

There being no further business, the meeting was adjourned at 6:57 p.m.


Mayor/Commissioner

ATTEST:


City Clerk