

The meeting of the Lake Wales City Commission held on October 15, 2013 in the Commission Chambers at the Municipal Administration Building. The meeting was called to order at 5:00 p.m. then recessed for a shade meeting. Deputy Mayor Christopher Lutton reconvened the meeting following the invocation and the Pledge of Allegiance at 6:00 p.m.

#### **INVOCATION**

Dr. Jim Moyer gave the invocation.

#### **PLEDGE OF ALLEGIANCE**

**COMMISSIONERS PRESENT:** Michael S. Carter; Betty Wojcik; Jonathan Thornhill; Christopher Lutton, Deputy Mayor

**COMMISSIONERS ABSENT:** Mayor Gene Fultz

**CITY REPRESENTATIVES PRESENT:** Kenneth Fields, City Manager; Clara VanBlargan, City Clerk; Jennifer Nanek, Deputy City Clerk; Albert C. Galloway, Jr., City Attorney

[Full staff memos are incorporated into the minutes. Meetings are recorded, but not transcribed verbatim.]

#### **MAYOR**

A proclamation was presented to retiring Deputy City Clerk Jacquie Hawkins in honor of her years of service.

Police Chief Chris Velasquez commended K9 teams Landry/Badge and Hampton/Deacon and commended them for their performance at the recent USPCA National competition in Washington, D.C.

#### **COMMUNICATIONS AND PETITIONS**

Brian Lepree, 503 Bullard Avenue, expressed concerns regarding Code Enforcement and what issues are being addressed. He has concerns regarding code violations in his neighborhoods. Kenneth Fields, City Manager, reviewed procedures, and goals of Code Enforcement. The department is currently short staffed so the department is directed to focus on health and safety concerns first. Run down properties and appearance issues are a lesser priority. Cliff Smith, Building Official, reviewed priorities such as unsafe buildings and has cited 9-10 this past month. Some properties are difficult to bring into compliance. Mr. Smith clarified some of the procedures for addressing code violations. The Commission discussed possible avenues of improvement.

Mimi Hardman, President of the Historic Lake Wales Society, announced Pioneer Days next weekend and invited all to attend.

Nicholas Smith, 1001 Tower Blvd., announced the Quilt reception at the Depot Museum Friday night on October 25, 5-7p.m.

#### **CONSENT AGENDA**

**Agenda Item 5. Approval of Minutes: October 1, 2013, Regular Meeting**

**Agenda Item 6. Special Event - Lake Wales Art Council "Make It Magical"**

[Begin staff memo]

#### **RECOMMENDATION**

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

1. Approve the special event permit application from the Lake Wales Art's Council to hold a holiday event "Make It Magical" on December 6, 2013 between the hours of 4:00 p.m. and 9:00 p.m.
2. Approve the temporary closing of the following:
  - a. portion of Stuart Avenue from South Market Street to Scenic Highway (SR17)
  - b. the Marketplace, the Marketplace parking lot , and both city lots on the east end of Stuart Avenue at Scenic Highway (SR17)
  - c. the alley between Stuart Avenue and Park Avenue
  - d. portion of South Market Street from Stuart Avenue to Central Avenue

## **BACKGROUND**

Barbara Connor, President of the Lake Wales Art's Council, submitted a special event permit application to hold a holiday event "Make It Magical" on December 6, 2013 between the hours of 4:00 p.m. and 9:00 p.m. in the downtown area. This event will provide a holiday destination for the entire family and will feature musicians and vocalists, numerous craft vendors in the Marketplace and a horse and carriage ride along Stuart Avenue. Local downtown restaurants will remain open providing a variety of food and refreshments; and local shops will stay open as well giving the public an opportunity to shop while attending a special holiday event.

As with the event last year, the Lake Wales Art's Council is requesting the temporary closing of a portion of Stuart Avenue from South Market Street to Scenic Highway (SR17), the temporary closing of a portion of South Market Street from Stuart Avenue to Central Avenue, the temporary closing of the Marketplace and the Marketplace parking lot, the temporary closing of the alley between Stuart Avenue and Park Avenue, and the temporary closing of the two city lots on the east end of Stuart Avenue at Scenic Highway (SR17).

The City's special event review staff has reviewed the application and has no issues with the event. The Streets Department will close the streets and parking lots. The sponsor is not requesting in-kind services from the Lake Wales Police Department however he Art's Council may decide to hire an off duty officer to be present for security reasons only.

## **OTHER OPTION**

Do not approve this special event permit application or the request for the temporary closing of several streets, the marketplace, and three city parking lots.

## **FISCAL IMPACT**

There will be no cost to the city associated with this event.

[End staff memo]

## **Agenda Item 7. Award of Bid to Florida Spectrum for Laboratory Services**

[Begin staff memo]

## **STAFF RECOMMENDATION**

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

1. Award the bid to Florida Spectrum for laboratory services.
2. Authorize the City Manager to execute the appropriate documents, on the City's behalf in regards to this service.

## BACKGROUND

The City of Lake Wales' Water and Wastewater Divisions are required by the Department of Environmental Protection Agency and the Florida Department of Environmental Regulation to routinely monitor and sample the water and solid residuals throughout the various stages of their respective treatment processes. The majority of these samples must be submitted to a laboratory certified by the State of Florida for analysis and reporting purposes to ensure that proper treatment is taking place and that compliance parameters are being met.

Currently the city is required to perform monthly bacteriological testing on the water line, nitrates and nitrites are tested annually, and TTHM's and HAA5's are tested quarterly. Staff collects samples, for which the lab would pick up for testing. Any other testing done by the water department is only necessary if a customer calls with a concern with the water quality at his or her residence. Since the city operates four water treatment plants and a distribution system, a sample has to be submitted for each one.

The wastewater plant has a daily pick up on samples, which require testing. Six out of 7 days, TSS and fecal coli form are tested for, on the 7<sup>th</sup> day, nh4 (ammonia), no3 (nitrate), tkn (nitrogen), TN (total nitrogen), on (organic nitrogen), cbod (biochemical oxygen demand), TSS (total suspended solids), fecal coli form are tested.

Staff made a request for bid for these laboratory services with a bid open date of September 24, 2013. There were six responsive bidders. The results are as follows:

The only two firms, which submitted all required paperwork and requested-information, are:

- **Southern Analytical**
- **Florida Spectrum**

The firms below lacked as follows:

- **Advanced Environmental** – No public entities statement submittal page, no business license or tax receipt
- **Mid Florida** – No vendor application, no bid submittal copies, public entities crime statement not sworn/notarized, pricing sheets incomplete
- **Flowers Chem** – No references
- **TestAmerica's** -No vendor application, no W-9, no public entities crime statement submittal

Although Southern Analytical was the lowest bidder by \$530.22, this lab is located in Oldsmar, which is in Pinellas County. Florida Spectrum is located in Ft. Meade. Staff chose Florida Spectrum of the six responsive bidders to provide these necessary laboratory services due to the proximity of the lab, the staff time that would be required to transport samples after hours in the event of a water line break, and emergency samples have to be taken to the lab.

Staff, therefore recommends commission approval to award the bid for laboratory services to Florida Spectrum.

## OPTIONS

None. This testing is a requirement per the Department of Environmental Protection.

## FISCAL IMPACT

\$15,000 and \$26,000 were placed in the FY '13-14 Operating Budgets for Water and Wastewater Contract Services – Laboratory, respectively. The bid request asked for pricing on a worst-case scenario. These

prices would be in effect in the case of an emergency event in which the city was required to perform additional testing.

[End staff memo]

**Agenda Item 8.           Donation of Surplus Property to the Town of Lake Hamilton**

[Begin agenda memo]

**RECOMMENDATION**

It is recommended that the City Commission take the following action(s):

1. Authorize disposal of the emergency lighting equipment.
2. Authorize staff to donate these items to the Town of Lake Hamilton.

**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.

The Town of Lake Hamilton has requested the donation of five (5) surplus emergency light systems no longer used by the Police Department. This equipment consist of three (3) Wheelen Strobe Bars, one (1) Tomar Strobe bar, one (1) Federal Signal strobe bar, two (2) power supplies/control boxes and spare bulbs/lenses. The collective resale value of these items is approximately \$250.

These light systems were removed from surplus vehicles several years ago and have been stored at the Fleet Maintenance facility as spare equipment since that time. The Police Department and other City departments no longer install this form of lighting due to the advancements and safety benefits of L.E.D lighting.

**OTHER OPTIONS**

1. Do not authorize disposal of the surplus items
2. Authorize disposal of the surplus items via public auction

**FISCAL IMPACT**

Approximately \$250

[End agenda memo]

**Agenda Item 9.           Disposal of Surplus Real Property**

[Begin agenda memo]

**RECOMMENDATION**

It is recommended that the City Commission take the following action(s):

1. Classify the property on W Sessoms Avenue - Parcel ID# 273002901000001110 as surplus.
2. Authorize staff to dispose of the property.

**BACKGROUND**

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

Parcel ID# 273002901000001110 is a vacant lot located on W. Sessoms Avenue, which serves no useful purpose to the City.

The property may be sold at public auction or to the highest bidder after soliciting sealed bids.

The assessed property value is \$8,696.

**OTHER OPTIONS**

Do not authorize disposal of surplus real property - Parcel ID# 273002901000001110

**FISCAL IMPACT**

Proceeds from the sale will be deposited into the general fund.

[End agenda memo]

**OPENED PUBLIC COMMENT**

There were no comments from the public regarding items on the consent agenda.

**CLOSED PUBLIC COMMENT**

Commissioner Wojcik made a motion to approve Consent Agenda Items 5-9. Commissioner Thornhill seconded the motion.

By Voice Vote:

Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Commissioner Carter	"YES"
Deputy Mayor Lutton	"YES"

The motion carried 4-0.

**OLD BUSINESS**

There was no old business.

**NEW BUSINESS**

**Agenda Item 10. Ordinance 2013-17, Amendment to Chapter 2 – Procurement - 1st Reading**

[Begin agenda memo]

**RECOMMENDATION**

It is recommended that the City Commission approve Ordinance 2013-17 after first reading.

## BACKGROUND

Ordinance 2013-17 amends the City's current procurement Ordinance, 2011-32. The proposed amendments update language in the City's existing procurement code sections to conform to Chapter 287 of the Florida Statutes and to modify certain other areas of the code that may be in the best interests of the City.

1. **Changes in Threshold Amounts** - It is recommended that the Commission revise the fixed threshold amounts of the existing city code of ordinances (**Sec. 2-402(a)**), to the allowable category threshold amounts provided within the **Florida Statute (F.S.) Sec. 287.017**:

Currently – The City's thresholds amounts compared to F.S. Section 287.017 are as follows:

	<u>City</u>		<u>287.017 F.S.</u>
Category One –	From \$ 15,000	to	\$ 20,000
Category Two –	From 25,000	to	35,000
Category Three –	From 50,000	to	65,000
Category Four –	From 150,000	to	195,000
Category Five –	From 250,000	to	325,000

Various sections of the City's code of ordinances relating to procurement provided authorization to a fixed dollar value rather than the proposed threshold category within F.S. 287-017. Numerous changes were required for the conversion to the threshold categories.

The following changes were noted:

- The statutory requirements for written agreements embodying all provisions and conditions of the procurement will be triggered at Category Two instead of \$20,000. Our current Ordinance binds this requirement to Category One procurements rather than Category Two. (**Sec. 2-406(b)**).
  - The cost of commodities or contractual services that require commission approval is increased from \$10,000 to Category One. (**Sec. 2-417(3)**).
  - The cost of commodities or contractual services that require competitive sealed bidding is increased from \$25,000 to Category Two (**Sec. 2-418(a)**).
  - The cost where a selection committee is *required* to review bid submittals for a Request for Proposal (RFP) is increased from \$150,000 to Category Four. (**Sec. 2-418(h)**).
  - The statutory requirements of the Consultants Competitive Negotiation Act (CCNA) are triggered at Category Five instead of \$250,000 for professional services on a construction project and at Category Two instead of \$25,000 for planning services. (**Sec. 2-423**).
  - The statutory requirements for procurement of Design-Build services are triggered at Category Four instead of \$150,000. (**Sec. 2-441**).
  - The requirement for notice in the legal section of a newspaper for a municipal public works project is increased from \$25,000 to Category Two (**Sec. 2-257**).
2. **Inclusion of the U.S. General Service Administration contract Schedules Under Which the City May Make Purchases** – The City's current code does not have a provision for utilizing U.S. General Service Administration contract schedules, though there is a provision for utilizing

State-level contracts. Staff recommendation is to include this amendment, which would allow the City to capitalize on these pre-negotiated federal contract schedules. **(Sec. 2-403-(b))**.

3. **Removal of City Code Sec. 2-408 titled “Piggybacking”** - In a memo to the City Commission dated October 15, 2009, City staff requested Commission “endorsement” of a contract piggyback policy. The policy requires City staff to obtain three informal quotes before piggybacking another agency’s contract is allowed. In practice, staff is unable to obtain quotes on every piggyback contract as bid specifications are not always available, particularly when the specifications require front-end engineering to obtain the specifications required to obtain the informal quotes. Sec. 2-408 was not included as an amendment to the purchase ordinance in the 2009 memo, but was adopted by the Commission as policy. Staff is requesting the Commission to retract the endorsement of this policy and authorize the removal of **Sec 2-408** from the City Code.

**City Code Sec. 2-404** already authorizes City staff to capitalize on contracts competitively bid by other agencies when documentation of the competitive bid process is provided to the Commission.

4. **Change in Local Vendor Preference from 2% to 5%** - With the adoption of Ordinance 2009-27, the City Commission granted a preference to local vendors when the bid of the local vendor is not more than 2% higher than the lowest bid. The proposed Ordinance amendment would increase the preference granted to local vendors from 2% to 5% **(Sec. 2-417(b))**.

The potential cost of a local preference policy when awarding a bid is illustrated in the following chart:

Amount of Bid	Value of 5%
\$25,000	\$1,250
\$50,000	\$2,500
\$100,000	\$5,000
\$200,000	\$10,000
\$400,000	\$20,000

5. **Establishment of a Procurement Card Program** - This Ordinance amendment establishes authorization and policies for procurement card (P-Card) purchases. Currently, the City’s only methods of acquisition for procuring day-to-day commodities are purchase orders (PO’s) and traditional checks. Procurement Cards will allow the City to capitalize on discounted pricing available through Internet purchases and will provide staff the ability to make travel arrangements, which typically require credit cards. The City Manager will have the sole authority to grant procurement cards to staff. The City Commission will establish the policies relating to the purchasing card program. **(Sec. 2-417(e))**.
6. **Establishment of a Bid Protest Method** - The current Purchasing Ordinance does not have a defined process for the remediation of protests that arise from the competitive sealed bid process. This amendment establishes a process whereby vendors may file a written protest with the City Manager no later than 72 hours after a bid award and shall receive a response from the City Manager within 21 days of the receipt of the protest stating any decisions made. During the City Manager’s review, the City shall not proceed further with the contract award until all administrative remedies have been exhausted. **(Sec. 2-418 (o))**.

**OTHER OPTIONS**

The Commission may elect to not amend the City's Purchase Ordinance with the proposed amendments

**FISCAL IMPACT**

The potential cost of the amended local preference is illustrated in the following chart:

Amount of Bid	Value of 5%
\$25,000	\$1,250
\$50,000	\$2,500
\$100,000	\$5,000
\$200,000	\$10,000
\$400,000	\$20,000

[End agenda memo]

Ms. VanBlargan read Ordinance 2013-17 by title only.

**AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, LAKE WALES CODE OF ORDINANCES, AMENDING RULES AND PROCEDURES FOR THE PROCUREMENT OF COMMODITIES OR CONTRACTUAL SERVICES TO CONFORM TO THRESHOLD AMOUNTS ESTABLISHED BY FLORIDA STATUTES FOR PURCHASING CATEGORIES; CONFORMING LANGUAGE IN VARIOUS SECTIONS TO PROVISIONS OF FLORIDA STATUTES; AMENDING THE PREFERENCE GRANTED TO LOCAL VENDORS WHEN PROCURING COMMODITIES OR CONTRACTUAL SERVICES; ESTABLISHING AUTHORIZATION FOR PROCUREMENT CARD PURCHASES; ESTABLISHING PROCEDURES FOR BID PROTESTS THAT ARISE FROM THE CONTRACT PROCUREMENT PROCESS; ESTABLISHING AUTHORIZATION FOR THE PROCUREMENT OF COMMODITIES OR CONTRACTUAL SERVICES ON GENERAL SERVICE ADMINISTRATION CONTRACT SCHEDULES; PROVIDING FOR AN EFFECTIVE DATE.**

Mr. James Slaton, Support Services Director, reviewed the proposed ordinance and was available for questions.

Commissioner Wojcik asked about the piggybacking policy, if that avenue of cost savings would still be utilized. Mr. Slaton confirmed it could and explained that other sections of code cover that.

Commissioner Thornhill asked that the commission be made aware of large purchases such as professional services. Mr. Fields confirmed that they would keep them apprised via the tracking report and other means. Possible identified pitfalls include projects becoming costly without the commissioners being aware of it.

Commissioner Thornhill made a motion to approve Ordinance 2013-17 after first reading. Commissioner Wojcik seconded the motion.

By Voice Vote:

Commissioner Thornhill "YES"



Commissioner Wojcik	"YES"
Commissioner Carter	"YES"
Deputy Mayor Lutton	"YES"

The motion carried 4-0.

**Agenda Item 11. Lake Belle Litigation - Partial Settlement**

[Begin agenda memo]

**RECOMMENDATION**

That the City Commission approve the Mediated Settlement Agreement, which partially resolves the Lake Belle litigation.

**BACKGROUND**

The action referred to as the Lake Belle litigation is styled Marcia Mudd, et. al., vs. City of Lake Wales. The action concerns flooding on Lake Belle following the Hurricanes of 2004 and the exceptional rainfall in 2005, which precipitated the flooding. The case was filed in 2006 and involves seven (7) different claimants. The subject Agreement serves to resolve one (1) of the claims. The terms of the Settlement Agreement are confidential under the Florida Rules of Civil Procedure and cannot be divulged until considered by the City Commission in an open forum.

**FISCAL IMPACT**

Confidential unless the settlement is approved.

**ALTERNATIVES**

Go to trial on this first of seven actions to determine damages.

[End agenda memo]

Albert C. Galloway, Jr., City Attorney announced that the Commission at the shade meeting held earlier has reviewed a partial settlement agreement on the Lake Belle matter. If approved, the agreement will become public record. This agreement addresses one plaintiff out of seven involved in this litigation.

Commissioner Thornhill made a motion to accept the mediated settlement agreement on the Lake Belle Litigation. Commissioner Wojcik seconded the motion.

By Voice Vote:

Commissioner Thornhill	"YES"
Commissioner Wojcik	"YES"
Commissioner Carter	"YES"
Deputy Mayor Lutton	"YES"

The motion carried 4-0.

Mr. Galloway reviewed the mediated settlement agreement, explaining that the plaintiff, Marcia Vanderveen formerly known as Marcia Mudd and her late husband Keith Mudd, is being awarded \$103,000. The agreement, now approved, is now public record. This was found by the court to be a temporary taking of property. Therefore, significant issues affect the city such as the pre-judgment interest that accrues from the beginning of the action, which was in 2006 and can become significant over time. The City also became

responsible for attorney's fees on both sides and agrees to pay the mediator costs of \$2,800. This is a difficult area of the law with potential for huge damages.

At Commissioner Carter's request, Mr. Galloway explained the legal term of "taking" and provided examples such as taking real property for a new road. The allegations were that the rising water of Lake Belle after the hurricanes of 2004 took a portion of the plaintiff's property without compensation. The lake rose 14 feet, 13 feet attributed to an Act of God the last foot attributed to the City of Lake Wales. Due to a pumping system installed in cooperation with the Southwest Florida Water Management District, there will be no recurrence of flooding. The concept of a temporary taking is new law. This will become a significant issue for local governments. More of this issue will be addressed as the rest of the case progresses. Deputy-Mayor Lutton reminded the Commission that there are six cases remaining to be settled.

Nicholas Smith, 1001 Tower Blvd., asked if this case sets a precedent for the others. Mr. Galloway explained that he could not comment on the remaining cases.

## **Agenda Item 12. Lake Wales Airport Litigation - Mediated Settlement**

[Begin agenda memo]

### **RECOMMENDATION**

That the City Commission approve the Release, which resolves the Lake Wales Airport litigation.

### **BACKGROUND**

The action referred to as the Lake Wales Airport litigation is styled Lake Wales Aviation, Inc., and Phoenix Air, Inc., vs. City of Lake Wales. The action concerns an alleged breach of contract following the destruction wrought at the Lake Wales Airport by Hurricane Charley in 2004. The terms of the Release include a complete settlement of all claims between the parties. The settlement terms are confidential under the Florida Rules of Civil Procedure and cannot be divulged until considered by the City Commission in an open forum.

### **FISCAL IMPACT**

Confidential unless the settlement is approved.

### **ALTERNATIVES**

Go to trial on the action and risk entry of a judgment against the City. There is no insurance coverage for damage claims in a breach of contract action.

[End agenda memo]

Albert C. Galloway, Jr., City Attorney, reviewed this agenda item and explained that the commission members have been briefed individually on the agreement but have not seen it until now. The subjects of the mediation cannot be divulged at this point. If approved the agreement becomes public record.

This case was originally filed in 2006 directly against the City's insurance company. The Circuit Court declared that the plaintiff had no standing to file against the insurer and the 2nd District Court of Appeals upheld this decision. Therefore, in 2009 the lawsuit was filed against the City.

Commissioner Carter asked if questions were allowed. Mr. Galloway said no and that there can be no negotiation. It must be approved or not. If it is not approved then the litigation goes forward. He emphasized that if a judgment is entered against the City of Lake Wales there is no insurance coverage for a judgment.

Commissioner Wojcik stated she was glad to see this resolved. The Deputy Mayor agreed with this sentiment.

Commissioner Wojcik made a motion to approve the settlement on the airport litigation. Commissioner Thornhill seconded the motion.

By Voice Vote:

Commissioner Wojcik	"YES"
Commissioner Thornhill	"YES"
Commissioner Carter	"YES"
Deputy Mayor Lutton	"YES"

The motion carried 4-0.

Mr. Galloway explained the terms of the settlement, as it is now public record. The settlement includes a total payment from the insurance company of \$925,000 to Lake Wales Aviation, Inc. or Betty Hill. The City approved changing the rent credits on the reconstructed hangars, which provide 47.1% less space. Lake Wales Aviation is applying rent credits in return for a previous investment 13 years ago. This fact led to this document coming before the City Commission for approval. This amount includes attorney's fees, damages and everything associated with the action. No fault is admitted to on either side. This litigation is finished.

#### **CITY MANAGER**

#### **City Commission Tracking Report:**

City Manager Ken Fields reviewed the tracking report

Deputy Mayor Lutton asked when the fire station is expected to be completed. Fire Chief Jerry Brown explained that the projected completion date is set for February. Lutton then asked when the rental on the property where the current fire station is ends. Chief Brown responded June. Lutton stated that was a good buffer in case the station took a bit longer to complete.

#### **City Commission Calendar**

A workshop date was set for December 3<sup>rd</sup> at 5:30 p.m. to discuss items to present to the legislative delegation scheduled for December 16<sup>th</sup> in Bartow.

#### **CITY COMMISSION COMMENTS**

The meeting was adjourned at 6:51 p.m.

  
\_\_\_\_\_  
Mayor/Deputy Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk Clara VanBlargan, MMC