

## **MINUTES**

May 19, 2008

The City Council of the City of Fort Myers, Florida, met in regular session at City Hall, 2200 Second Street, its regular meeting place in the City of Fort Myers, Florida, on Monday, May 19, 2008, at 4:31 o'clock p.m. Present were Mayor Jim Humphrey, presiding, Council Members Warren J. Wright, Johnny W. Streets, Levon Simms, Michael Flanders, Randall P. Henderson, Jr., and Thomas C. Leonardo. Also present were William P. Mitchell, City Manager, Nancy Heberle, Deputy City Clerk, and Grant W. Alley, City Attorney. Absent: Marie Adams, CMC, City Clerk.

The meeting was opened with prayer led by Councilman Streets.

Mayor Humphrey led the Pledge of Allegiance to the Flag of the United States of America.

**PUBLIC INPUT NON-PUBLIC HEARING ITEMS: NO. 42C BUSINESS FRIENDLY SERVICE** David M. Jones, landscape architect, stated that processes and procedures of the City regarding permitting should be reviewed. Mr. Jones stated that the permitting for Harlem Lakes Park, a 9,000 square foot site located at 2108 Hale Court, required 25 sets of plans for the Planning Board, 15 sets of plans for the Board of Adjustments, 3 sets of plans for the tree removal permit, 3 sets of plans for the clearing permit, 4 sets of plans for the site permit, and 4 sets of plans for the shelter on site. Mr. Jones stated that 60 sets of plans were required to be submitted to the City for the upgrade of a .2 acre park facility with no trees. Mr. Jones stated that a development order in Lee County required a site permit and all the building permits were referred to by that number. Mr. Jones stated that another park was being upgraded for the City and 4 complete sets of plans were required for each building. Mr. Jones stated that plans were expensive and time consuming. Mr. Jones stated that business professionals and land owners would work with City personnel to develop an efficient procedure.

**PUBLIC INPUT NON-PUBLIC HEARING ITEMS: NO. 42C BUSINESS FRIENDLY SERVICE** Lee Ford, 2959 Broadway, stated that people attempting to obtain permits to expand their businesses were frustrated by the process and as a result abandoned the projects after investing \$250,000.00 to \$400,000.00. Mr. Ford stated that the City could not afford to lose businesses with the present economy. Mr. Ford stated that the construction industry had declined. Mr. Ford stated that there were businesses in operation in the City for 10 to 20 years unable to expand due to the process. Mr. Ford stated that the process of issuing permits required by the City discouraged business owners. Mr. Ford stated that a committee of professionals, architects and engineers should meet with the City to discuss the issue and develop solutions to the permitting problems.

**PUBLIC INPUT NON-PUBLIC HEARING ITEMS: NO. 46 ORDINANCE CLARIFYING THE HOURS OF SALE OF ALCHOLIC BEVERAGES** Raimond Aulen, 2219 Main Street, stated that the hospitality industry was a major employer in the State and contributed to the economy. Mr. Aulen stated that every consideration should be given to decisions that affect the hospitality industry. Mr. Aulen stated that the hospitality industry was able to withstand economic recessions. Mr. Aulen stated that as a small business owner over \$62,000.00 in taxes and other expenses to vendors in the amount of \$360,000.00 was paid in 2006. Mr. Aulen stated that the hospitality business had an economic impact on the community for jobs and revenues. Mr. Aulen stated that his business was closed down on hospitality night which was an event that catered to the employees in the hospitality industry. Mr. Aulen stated that the proposed ordinance provided that businesses could be open until midnight on Sunday. Mr. Aulen stated that the status of Monday morning was not clear and the ordinance did not address the hours of 12:00 a.m. to 2:00 a.m. on Monday morning. Mr. Aulen stated that losing the early Monday morning hours would cause a loss of jobs and

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revenue. Mr. Aulen stated that there should be no restriction for the hospitality industry from 12:00 a.m. to 2:00 a.m. on Monday morning.

**PUBLIC INPUT NON-PUBLIC HEARING ITEMS: NO. 46 ORDINANCE CLARIFYING THE HOURS OF SALE OF ALCHOLIC BEVERAGES** Eric Lindsey, 18601 Bartow Boulevard, stated that the law regarding hours of sale of alcoholic beverages was written in 1956 and had not been enforced for over ten (10) years until last year. Mr. Lindsey stated that the ordinance did not permit or deny the sale of liquor between the hours of midnight Sunday and 2:00 o'clock a.m. Monday. Mr. Lindsey stated that clarification would be beneficial and there was no justification for limiting the hours for the sale of alcoholic beverages on Monday morning.

**PUBLIC INPUT ON NON-PUBLIC HEARING ITEMS: NO. 47 PROPOSAL FROM JOSEPH DESIMONE FOR DISPOSITION OF REAL PROPERTY IN A COMMUNITY REDEVELOPMENT AREA AT 2978 DR. MARTIN LUTHER KING JR. BOULEVARD AND PERMISSION TO ADVERTISE NOTICE OF DISPOSITION OF REAL PROPERTY IN A COMMUNITY REDEVELOPMENT AREA FOR A PUBLIC HEARING, PURSUANT TO FLORIDA STATUTE 163.380 AND CITY CODE, SECTION 2-39** Christine Wright, 430 SW 19 Street, Cape Coral, stated that the disposition of real property should be advertised.

**CONSENT AGENDA** Mayor Humphrey stated that the Consent Agenda consisted of items that were considered to be relatively matter of fact. Mayor Humphrey stated that any Council Member may request that any item be removed from the Consent Agenda and placed on the regular agenda for discussion following the adoption of the Consent Agenda. Councilman Flanders stated that No. 19 Construction Manager at Risk – Continuing Contract, Request for Qualifications No. 08/17/07-RFQ-PW, with Lodge Construction, Inc. and No. 25 Change Order Agreement No. 6 to Professional Services Agreement – Downtown Utility & Streetscape Improvement Project, Request for Qualifications No. 306-02, with Dyer, Riddle, Mills & Precourt, Inc. should be removed from the Consent Agenda for discussion. Mayor Humphrey stated that No. 29 Certificate of Title from the Clerk of the Lee County Circuit Court for Foreclosed Property located at 2716 Larmie Street for infill development of affordable housing and authorize release of all City liens and No. 30 Certificate of Title from the Clerk Of The Lee County Circuit Court for foreclosed property located at 2578 Larmie Street for infill development of affordable housing and authorize release of all City liens should be removed from the Consent Agenda for further discussion.

**NO. 1 MINUTES** Minutes of the regular meeting held on May 5, 2008, had been delivered to City Council.

**NO. 2 NOMINATION OF MILDRED BRYSON BY COUNCILMAN STREETS FOR REAPPOINTMENT TO THE NUISANCE ABATEMENT BOARD** Councilman Streets nominated Mildred Bryson for reappointment to the Nuisance Abatement Board, term effective March 6, 2008, through September 30, 2008.

**NO. 2A NOMINATION OF GREGORY GOETZ BY COUNCILMAN SIMMS FOR APPOINTMENT TO THE CITIZEN POLICE OVERSIGHT STUDY COMMITTEE** Councilman Simms nominated Gregory Goetz for appointment to the Citizen Police Oversight Study Committee, term effective for 90 days from the first meeting.

**NO. 2B NOMINATIONS OF PAT GRULKE AND JIM SCRIVNER BY MAYOR HUMPHREY FOR REAPPOINTMENT TO THE BEAUTIFICATION ADVISORY BOARD** Mayor Humphrey nominated Pat Grulke and Jim Scrivner for reappointment to the Beautification Advisory Board, terms effective April 1, 2008, through September 30, 2008.

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**NO. 2C NOMINATIONS OF THOMAS B. BIRCH AND ROGER L. SMITH BY MAYOR HUMPHREY FOR REAPPOINTMENT TO THE BOARD OF ADJUSTMENTS** Mayor Humphrey nominated Thomas B. Birch and Roger L. Smith for reappointment to the Board of Adjustments, terms effective March 21, 2008, through September 30, 2008, and December 17, 2007, through September 30, 2008, respectively.

**NO. 2D NOMINATIONS OF KIMBERLY A. ROCHA AND RUSSELL P. SCHROPP, ESQUIRE BY MAYOR HUMPHREY FOR REAPPOINTMENT TO THE NUISANCE ABATEMENT BOARD** Mayor Humphrey nominated Kimberly A. Rocha and Russell P. Schropp, Esquire for reappointment to the Nuisance Abatement Board, terms effective March 2, 2008, through September 30, 2008, and March 20, 2008, through September 30, 2008, respectively.

**NO. 2E NOMINATION OF CURTIS MCCARTER BY COUNCILMAN STREETS FOR APPOINTMENT TO THE CITIZEN POLICE OVERSIGHT STUDY COMMITTEE** Councilman Streets nominated Curtis McCarter for appointment to the Citizen Police Oversight Study Committee, term effective for 90 days from the first meeting.

**NO. 3 BUDGET AMENDMENT APPROPRIATING FUNDS FROM RISK MANAGEMENT FUND RESERVES AND ESTABLISH A PROJECT FOR WINKLER-BROADWAY TRAFFIC SIGNAL REPLACEMENT IN THE CAPITAL IMPROVEMENT BUDGET** The budget amendment, in the amount of \$51,000.00, appropriated funds from Risk Management Fund Reserves and established a project for Winkler-Broadway Traffic Signal Replacement by like amount in the Capital Improvement Budget. A mast arm for a traffic signal at the intersection of Winkler Avenue and Broadway was damaged by a truck that exceeded height restrictions. The funds received from insurance were deposited into the Risk Management Fund on May 31, 2007.

**NO. 4 BUDGET AMENDMENT FROM CITYWIDE ALTERNATIVE TRANSPORTATION MODES CAPITAL PROJECT TO WINKLER AVENUE BIKE LANE/METRO-COLONIAL CAPITAL PROJECT UTILIZING FUNDS FROM ROAD IMPACT FEES** The budget amendment, in the amount of \$300,000.00, from Citywide Alternative Transportation Modes capital project to Winkler Avenue Bike Lane/Metro-Colonial capital project utilized funds from Road Impact Fees for the additional costs. The bid for the project exceeded the initial cost estimates by \$250,000.00. Material testing and construction inspection services would be included in the project.

**NO. 5 BUDGET AMENDMENT APPROPRIATING FUNDS FROM SOLID WASTE ROLL-OFF ASSETS \$750-\$5,000 AND INCREASING FISCAL YEAR 2008 CAPITAL IMPROVEMENT BUDGET FOR A CALL CENTER AT THE PUBLIC WORKS UTILITIES CENTER** The budget amendment, in the amount of \$30,000.00, appropriated funds from Solid Waste Roll-Off Assets \$750-\$5,000 and increased Fiscal Year 2008 Capital Improvement Budget by like amount for a call center at the Public Works Utilities Center, 2925 Dr. Martin Luther King Jr. Boulevard. The Information Technology Systems Department had started the installation of Voice over Internet Protocol telephone system throughout the City. The Utilities Center required additional funding for a server cabinet, telephones for thirty (30) agents, software for ten (10) additional users, and installation to establish the call center.

**NO. 6 BUDGET AMENDMENT APPROPRIATING FUNDS FROM SOLID WASTE RESERVES TO SOLID WASTE LINE OF CREDIT** The budget amendment, in the amount of \$750,000.00, appropriated funds from Solid Waste Reserves to Solid Waste Line of Credit by like amount to pay the principal and interest on the amount drawn down for the purchase of trucks. Funds, in the amount of \$50,000.00, were drawn down from the

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Line of Credit in Fiscal Year 2004-2005 to purchase garbage trucks \$100,000.00 was drawn down in Fiscal Year 2005-2006 for the purchase of trucks, and \$600,000.00 was drawn down in Fiscal Year 2006-2007 to purchase garbage trucks. The Line of Credit established in Fiscal Year 2004-2005 as a funding source for solid waste vehicles and capital projects and at the end of each fiscal year available funds from the Solid Waste Fund were used to pay down any draw from the line of credit. The Solid Waste Division had sufficient capital in Fiscal Year 2006-2007 to repay \$750,000.00 that was drawn down.

**NO. 7 BUDGET AMENDMENT APPROPRIATING FUNDS FROM SOLID WASTE RESERVES AND REALLOCATING FUNDS FROM SOLID WASTE LINE OF CREDIT TO SOLID WASTE PAY-AS-YOU-GO** The budget amendment, in the amount of \$870,602.77, appropriated funds from Solid Waste Reserves and reallocated funds from Solid Waste Line of Credit by like amount to Solid Waste Pay-As-You-Go to fund purchases as follows:

- Mini Side Loader - \$209,600.77
- Front-End Loader - \$274,486.00
- Dumpster Delivery - \$75,000.00
- F450 Truck - \$86,516.00
- Steel Building - \$225,000.00

The Line of Credit established in Fiscal Year 2004-2005 was a funding source for solid waste vehicles and capital projects and at the end of each fiscal year available funds from the Solid Waste Fund was used to pay down any draw from the line of credit. The Solid Waste Division had sufficient capital in Fiscal Year 2006-2007 to repay \$870,602.77 for the Line of Credit budgeted for Fiscal Year 2007-2008

**NO. 8 BUDGET AMENDMENT APPROPRIATING FUNDS FROM ATTAINABLE HOUSING MORTGAGE ASSISTANCE PROGRAM TRUST FUND AND ATTAINABLE HOUSING TRUST FUND REHABILITATION PROGRAM TO FUND THE HOME FORECLOSURE PREVENTION AND ASSISTANCE PROGRAM** The budget amendment, in the total amount of \$317,497.00, appropriated \$236,587.00 from Attainable Housing Mortgage Assistance Program Trust Fund and \$80,910.00 from Attainable Housing Trust Fund Rehabilitation Program to fund the Home Foreclosure Prevention and Assistance Program. The Home Foreclosure Prevention and Assistance Program was established due to the increased number of homeowners at risk of mortgage foreclosure. Homeowners with a deferred mortgage through the State Housing Initiatives Partnership Program or the Community Development Block Grant Program would be given first consideration to protect the interests of the City.

**NO. 9 AGREEMENT WITH LEE COUNTY FOR IMPROVEMENTS WITHIN PRAIRIE PINES PRESERVE FOR OFFSITE MITIGATION OF UNAVOIDABLE WETLANDS IMPACT DURING DEVELOPMENT EASTWOOD VILLAGE** The Agreement with Lee County for Improvements within Prairie Pines Preserve, in the amount of \$6,000,000.00, was for offsite mitigation of unavoidable wetlands impact during development of Eastwood Village. Bonita Bay Group, the developer, would reimburse \$3,000,000.00 for the offsite mitigation. Eastwood Village was a City public-private project with Bonita Bay Group for redevelopment of the former City wellfield site into a mixed-use residential community. The 838 acre, more or less, site was a designated brownfield located west of Interstate 75 at the southwest intersection of Dr. Martin Luther King Jr. Boulevard and Ortiz Avenue. Eastwood Village was developed with an emphasis on workforce housing, a true mixed income community, a destination community with connections to outside neighborhoods, and an active mixed-use environment, including neighborhood retail along Dr. Martin Luther King Jr. Boulevard in the form of a town center. The

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site was the gateway to the City from two Interstate 75 off-ramps. A portion of the wellfield since the 1950s was used for the discharge of water to artificially hydrate the wellfield resulting in created wetlands. The artificially created wetlands resulted in uncertainty as to the ultimate wetland/upland line. There were no regionally significant wetlands on the site. Development of Eastwood Village caused unavoidable impacts to the onsite wetlands requiring mitigation. Bonita Bay Group environmental consultants determined and permitting agencies confirmed that contiguous offsite wetland mitigation would provide greater ecological value than fragmented onsite wetland mitigation. The City proposed offsite wetland mitigation consisting of 674 acres, more or less, at the Lee County Prairie Pines Preserve site to provide sufficient space for the Eastwood Village development. Prairie Pines Preserve was acquired by Lee County as two parcels in 2001 and 2003, totaling approximately 2,709 acres and was the largest Conservation 20/20 preserve in Lee County. The total cost for the offsite mitigation was estimated at \$6,000,000.00. Johnson Engineering estimated the off-site mitigation at \$4,503,598.05. A total of \$6,000,000.00 or \$2,000,000.00 for Fiscal Years 2008-2009, 2009-2010, and 2010-2011 was included in the General Five Year Capital Improvement Program. Bonita Bay Group may reimburse the City for up to \$3,000,000.00 when purchasing property for development.

### **NO. 10 INTERLOCAL AGREEMENT FOR SUPPORT AND PARTICIPATION IN THE LEE COUNTY TRANSIT AUTHORITY WITH THE CITY OF BONITA SPRINGS, CITY OF CAPE CORAL, CITY OF SANIBEL, AND LEE COUNTY BOARD OF COUNTY COMMISSIONERS**

The Interlocal Agreement for Support and Participation in the Lee County Transit Authority with the City of Bonita Springs, City of Cape Coral, City of Sanibel, and the Lee County Board of County Commissioners recognized the need to create a countywide forum to promote shared goals related to public transit.

### **NO. 11 INTERAGENCY COOPERATIVE AGREEMENT FOR OPERATION OF THE LEE COUNTY TRIAGE CENTER/LOW DEMAND SHELTER**

The Interagency Cooperative Agreement for the Operation of the Lee County Triage Center/Low Demand Shelter with Lee County Board of County Commissioners, The Salvation Army, Lee Mental Health, Inc., Southwest Florida Addiction Services, Inc., Lee Memorial Health System, United Way of Lee County, National Alliance on Mental Illness of Lee County, Department of Children and Families Substance Abuse & Mental Health Program Office, Fort Myers Police Department, Cape Coral Police Department, and Lee County Sheriff's Office, provided for a coordinated system of care and behavioral health assessments, overnight shelter, and referrals for other services.

### **NO. 12 ANNUAL RENEWAL OF THE CONTRACT FOR SUPPLEMENTAL POLICE SERVICES WITH THE HOUSING AUTHORITY OF THE CITY OF FORT MYERS**

The annual renewal of the Contract for the Provision of Supplemental Police Services, in the monthly amount of \$7,000.00, with The Housing Authority of the City of Fort Myers, was for assignment of 5 police officers to Housing Authority family developments, adjacent areas, and baseline services, effective April 1, 2008, through March 31, 2009.

### **NO. 13 MODIFICATION NO. 1 TO FEDERALLY FUNDED SUBGRANT AGREEMENT, PROJECT NO. 1539-091-R, WITH THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT**

Modification No. 1 to the Federally Funded Subgrant Agreement, Project No. 1539-091-R, with the State of Florida, Division of Emergency Management, extended the Public Safety Facilities Wind Retrofitting to March 31, 2009, for the Police Department and Fire Department.

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**NO. 14 SERVICE & EQUIPMENT AGREEMENT WITH EMBARQ FLORIDA, INC. FOR MAINTENANCE AND A ONE TIME SOFTWARE AND INSTALLATION FEE FOR COBRA E911** The Service & Equipment Agreement, in the monthly amount of \$100.00, for maintenance and a one-time software and installation fee, in the amount of \$1,750.00, with Embarq Florida, Inc. was for Cobra e911 software to be integrated with the new Voice over Internet Protocol telephone system.

**NO. 15 CONTRACT SERVICE ARRANGEMENT WITH EMBARQ FLORIDA, INC.** The Contract Service Arrangement in the monthly amount of \$80.00, with Embarq Florida, Inc. was for 800 additional Direct Inward Dialing numbers for 36 months. The 800 additional Direct Inward Dialing numbers would allow for a total of 2,000 available telephone numbers and complete the design of the new Voice over Internet Protocol telephone system.

**NO. 16 EMERGENCY RESPONSE PRODUCT AGREEMENT WITH DELL MARKETING L.P.** The Emergency Response Product Agreement with Dell Marketing L.P. was for the purchase or loan of replacement Dell equipment during weather emergencies or other disasters. The City would be able to contact Dell and request equipment and Dell would ship the equipment as a loan until the City recovered the original equipment or created a purchase order to purchase the loaned equipment. The loan period was 90 days with no charge to the City for use of the equipment if returned within ten (10) days of the expiration of the loan period. The Information Technology Systems Department could recover crucial City systems within a shorter timeframe if the City experienced a major disaster.

**NO. 17 SERVICE AGREEMENT WITH JT PACKARD FOR MAINTENANCE OF THE UNINTERRUPTED POWER SUPPLY** The Service Agreement, in the annual amount of \$3,844.00, with JT Packard was for maintenance of the Uninterrupted Power Supply located in the data center, City Hall, 2200 Second Street.

**NO. 18 AMENDMENT NO. 1 TO STATE FINANCIAL ASSISTANCE AGREEMENT, DEP AGREEMENT NO. LP6720 WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE DOWNTOWN WATER, SEWER, AND STORMWATER DRAINAGE IMPROVEMENT PHASE K-1B PROJECT** Amendment No. 1 to the State Financial Assistance Agreement, DEP Agreement No. LP6720 with the Florida Department of Environmental Protection was for the Downtown Water, Sewer, and Stormwater Drainage Improvement Phase K-1B Project and extended the completion date to May 31, 2009.

**NO. 20 PROFESSIONAL SERVICES AGREEMENT – CONTINUING CONTRACT FOR MARINE ENGINEERING, REQUEST FOR QUALIFICATIONS NO. 08/20/07-RFQ-PW, WITH COASTAL ENGINEERING CONSULTANTS, INC.** The Professional Services Agreement – Continuing Contract for Marine Engineering, Request for Qualifications No. 08/20/07-RFQ-PW, with Coastal Engineering Consultants, Inc., was for various city-wide marine engineering services, effective for 3 years. The Professional Services Agreement – Continuing Contract for Marine Services provided for projects less than \$1,000,000.00 each.

**NO. 21 AMENDMENT AGREEMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT FOR TRAILHEAD PARK RECREATIONAL FACILITY, REQUEST FOR QUALIFICATIONS NO. 06-08-21, WITH DAVID M. JONES JR. & ASSOCIATES, INC.** Amendment Agreement No. 1, in the not-to-exceed amount of \$20,500.00, to the Professional Services Agreement for Trailhead Park Recreational Facility, Request for Qualifications No. 06-08-21, with David M. Jones Jr. & Associates, Inc., was for engineering and site planning services for the location of a

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proposed 2,800 square foot building for the Parks Division, Public Works Department, on the Trailhead Park site Northwest corner of Veronica S. Shoemaker Boulevard and Shoemaker Lane. Professional services included modifications to the site utility including a lift station and water and irrigations lines, and drainage plans for the proposed building.

**NO. 22 AMENDMENT NO. 1 TO SUPPLEMENTAL AUTHORIZATION NO. 3 TO PROFESSIONAL SERVICES AGREEMENT CONTINUING CONTRACT - MISCELLANEOUS ENGINEERING SERVICES, REQUEST FOR QUALIFICATIONS NO. 05-10-05, WITH JOHNSON ENGINEERING, INC.** Amendment No. 1, in the amount of \$79,286.00, to Supplemental Authorization No. 3 to the Professional Services Agreement Continuing Contract – Miscellaneous Engineering Services, Request for Qualifications No. 05-10-05, with Johnson Engineering, Inc. was for Additional Services for Eastwood Golf Course Reuse Lake. Johnson Engineering, Inc. would review the conditions specified in the Water Use Permit approved by the South Florida Water Management District and application of those conditions to the existing and proposed irrigation system at Eastwood Golf Course, perform a hydraulic analysis on the existing pumping system, and prepare a final design report which included the preparation and submittal of construction plans.

**NO. 23 FINAL CLOSE OUT AND CHANGE ORDER NO. 2 TO CONSTRUCTION CONTRACT NO. 19-05-06, COLONIAL BOULEVARD FORCE MAIN INTERCONNECT WITH STRICKLER BROTHERS, INC.** Final Close Out and Change Order No. 2, in the amount of \$120,662.00, to Construction Contract No. 19-05-06, Colonial Boulevard Force Main Interconnect with Strickler Brothers, Inc. increased the contract amount from \$1,897,702.50 to \$2,018,364.50, and increased the contract time by 122 days or to January 31, 2008. The contractor submitted final close out documentation including certificate of final completion, statement of guarantee, warranty title, and lien release.

**NO. 24 FINAL CLOSE OUT AND CHANGE ORDER NO. 2 TO AMENDMENT NO. 6 TO CONSTRUCTION MANAGEMENT AT RISK – CONTINUING CONTRACT WITH THE CHRIS-TEL COMPANY, INC. FOR BUS SHELTERS IN WINKLER SAFE NEIGHBORHOOD** Final Close Out and Change Order No. 2, in the amount of \$12,527.20, to Amendment No. 6 to Construction Management At Risk – Continuing Contract with The Chris-Tel Company, Inc. decreased the number of bus shelters in the Winkler Safe Neighborhood area by one and decreased the contract amount from \$108,932.00 to \$96,527.20. The final payment, in the amount of \$9,640.48, was released. The contractor submitted final close out documentation including certificate of final completion, statement of guarantee, warranty title, and lien release.

**NO. 26 SUPPLEMENTAL TASK AUTHORIZATION NO. 8 TO PROFESSIONAL SERVICES AGREEMENT CONTINUING CONTRACT - MISCELLANEOUS ENGINEERING SERVICES, REQUEST FOR QUALIFICATIONS NO. 05-10-05 WITH T.Y. LIN INTERNATIONAL FOR CONSTRUCTION, ENGINEERING, AND INSPECTION SERVICES FOR BRIDGE AND CULVERT REPAIRS AND REPLACEMENT OF ONE WATERWAY CROSSING** Supplemental Task Authorization No. 8, in the amount of \$110,156.00, to the Professional Services Agreement Continuing Contract - Miscellaneous Engineering Services, Request for Qualifications No. 05-10-05 with T.Y. Lin International was for construction, engineering and inspection services for Bridge and Culvert Repairs and Replacement of One Waterway Crossing.

**NO. 27 SUPPLEMENTAL TASK AUTHORIZATION NO. 11 TO PROFESSIONAL SERVICES AGREEMENT CONSTRUCTION MANAGEMENT-AT-RISK – CONTINUING CONTRACT WITH TAYLOR-PANSING INC. REQUEST FOR QUALIFICATIONS NO. 1001-04 FOR RENOVATIONS TO THE SKATIUM** Supplemental

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Task Authorization No. 11, in the amount of \$274,427.00, to the Professional Services Agreement Construction Management-At-Risk – Continuing Contract with Taylor-Pansing Inc., Request for Qualifications No. 1001-04 was for renovations to the Skatium, 2250 Broadway Avenue. Renovations included the removal of the old rubber flooring and the installation of new flooring around the ice skating rink, the repair of the upper wall section of the rink, and painting of the ice skating rink area. The in-line side barrier glass and gasket and the flooring surface in-line rink would be removed and replaced.

**NO. 28 CERTIFICATE OF TITLE FROM CLERK OF THE LEE COUNTY CIRCUIT COURT FOR FORECLOSED PROPERTY LOCATED AT 327 NOGALES STREET FOR INFILL DEVELOPMENT OF AFFORDABLE HOUSING AND RELEASE OF ALL CITY LIENS** The Certificate of Title for 327 Nogales Street was received from the Clerk of the Lee County Circuit Court. The property was described as follows:

Lots 19 and 20, Block A, Santa Anna Park Subdivision, according to the plat thereof, as recorded in Plat Book 8, Page 4, of the Public Records of Lee County, Florida.

The City obtained the parcel by foreclosure for unpaid code enforcement liens. The unpaid City liens would be released and the lot would be used to construct a single-family, owner-occupied residence that conformed to the City Affordable Housing Standards.

**NO. 31 WARRANTY DEED FROM SOUTHERN HOMES OF FT. MYERS I, LLC, FOR A 25 FOOT BY 103 FOOT, MORE OR LESS, RIGHT-OF-WAY, LOCATED SOUTH OF WINKLER AVENUE EXTENSION AND NORTH OF PEAR STREET, AS PART OF THE FUTURE MAIN STREET VILLAGE** Removed by Saeed Kazemi, City Engineer, Engineering Division, Public Works Department, on May 16, 2008.

**NO. 32 GRANT OF EASEMENT FROM THE SCHOOL BOARD OF LEE COUNTY FOR AN IRREGULAR SHAPED NON-EXCLUSIVE PERPETUAL UTILITY EASEMENT LOCATED ON THE SOUTH SIDE OF NEW YORK AVENUE AND WEST OF MARSH AVENUE IN EAST PALM SUBDIVISION** The Grant of Easement from The School Board of Lee County for an irregular shaped non-exclusive perpetual utility easement located on the south side of New York Avenue and west of Marsh Avenue in East Palm Subdivision was for a lift station for the new Michigan Elementary School. The utility easement was described as follows:

An easement lying in the State of Florida, County of Lee, City of Fort Myers, in Section 17, Township 44 South, Range 25 East, over a portion of Lots 17, 18 and 19 of East Palm Subdivision as recorded in Plat Book 29, Pages 93 through 98 of the public records of said Lee County, and being more particularly described as follows:

Beginning at the North  $\frac{1}{4}$  corner of said Section 17 (also being the northwesterly corner of said Lot 17) thence N88°48'34"E for a distance of 352.33 feet, along said northerly line; thence S01°11'26"E for a distance of 40.00 feet; thence S88°48'34"W for a distance of 295.04 feet, parallel with 40.00 feet southerly of said northerly line; thence S43°40'090"W for a distance of 10.00 feet; thence S01°28'16"E for a distance of 150.26 feet parallel with and 50.00 feet easterly of the westerly line of the Northeasterly Quarter of said Section 17; thence N88°31'44"E for a distance of 50.00 feet; thence S01°28'16"E for a distance of 100.00 feet parallel with and 100.00 feet easterly of said westerly line; thence

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S88°31'44"W for a distance of 100.00 feet to said westerly line; thence N01°28'16"E a distance of 297.60 feet along said westerly line returning to the Point of Beginning. Containing 31,998.02 square feet, more or less.

**NO. 33 GRANT OF PUBLIC UNDERGROUND UTILITY EASEMENT FROM WILLIAM AND CYNTHIA HUMPHREY FOR A 10 FOOT WIDE EASEMENT LOCATED AT 2435 FOWLER STREET, LOT 23, BLOCK D, PINEHURST PARK** The Grant of Public Underground Utility Easement from William and Cynthia Humphrey for a 10 foot wide easement located at 2435 Fowler Street, Lot 23, Block D, Pinehurst Park, was for utility installation, operation, and maintenance. The utility easement was described as follows:

A tract or parcel of land being the west 100 feet of Lot 23, Block D, as shown on the Plat of the HB Blank's Resubdivision of the East ½ of Pinehurst Park, recorded in Plat Book 6 at Page 10 in the Public Records of Lee County, Florida and lying in Section 24, Township 44 South, Range 24 East, City of Fort Myers, Lee County, Florida, being described as follows:

Beginning at the southwest corner of said Lot 23; thence run N 01°29'45" W, along the west line of said lot, for 56.00 feet to an intersection with the north line of said Lot 23; thence run N 88°58'59" E along said north line for 10.00 feet; then run S 01°29'45" E along a line 10.00 feet east of (as measured on a perpendicular) and parallel with said west line of Lot 23 for 56.01 feet to an intersection with the south line of said lot; thence run S 89°00'50" W along said south line for 10.00 feet to the point of beginning. Parcel contains 560 square feet, more or less.

Bearings are based on the west line of Block D of said plat of HB Blank's Resubdivision of the East ½ of Pinehurst Park to bear N 01°29'45" W.

**NO. 34 GRANT OF PERPETUAL PUBLIC UTILITY EASEMENT TO LEE COUNTY FOR A 20 FOOT WIDE EASEMENT CROSSING A DRAINAGE RIGHT-OF-WAY ON THE NORTH SIDE OF KUTAK ROAD, EAST OF METRO PARKWAY** The Grant of Perpetual Public Utility Easement to Lee County for a 20 foot wide easement crossing a drainage right-of-way on the north side of Kutak Road, east of Metro Parkway was for the installation of a Florida Power and Light Company force main to connect a new substation located at 3150 Hanson Street. The 20 foot wide easement was described as follows:

An easement for utility purposes over, under, and across part of the right-of-way reserved for Fort Myers Drainage District, as shown on the plat of East Stadler Farms, recorded in the Plat Book 5, Page 6, Public Records of Lee County, Florida. Said easement being 20 feet in width, lying 10.00 feet on each side, as measured right angles to and parallel with the following described centerline;

Commencing at the southeast corner of Lot 28 in said plat of East Stadler Farms; thence along the south line of said Lot 28, being also the north line of said right-of-way, South 88°19'22" West, a distance of 306.78 feet to the point of beginning of said centerline herein described; thence along said centerline and across said right-of-way, the following two (2) courses:

South 01 14'17" East, a distance of 10.00 feet;

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South 43°45'43" East, a distance of 99.42 feet to the south line of said right-of-way and there said centerline terminates.

The sidelines of said easement are to be lengthened or shortened as to form a continuous easement and to terminate in said north and south lines of said right-of-way.

Containing 2,189 square feet or 0.0503 acres of land.

**NO. 35 ACCEPTANCE AND MAINTENANCE OF WATER AND SEWER UTILITIES WITHIN AUGER DRIVE RIGHT-OF-WAY IN ALLIED RECYCLING DEVELOPMENT LOCATED EAST OF VERONICA S. SHOEMAKER BOULEVARD FROM ALLIED RECYCLING, INC.** The close out documents, including a one (1) year warranty, for water and sewer utilities within Auger Drive right-of-way east of Veronica S. Shoemaker Boulevard in Allied Recycle Development were received from Allied Recycling, Inc. The water contributory asset was in the amount of \$49,380.00 and the wastewater contributory asset was in the amount of \$38,670.00.

**NO. 35A REQUEST FOR INTEREST AND QUALIFICATIONS FOR TANGIBLE REAL ESTATE ASSESSMENT AND PORTFOLIO STRATEGY, REQUEST FOR QUALIFICATIONS NO. 05/19/08-RFQ-CM FOR ANALYSIS OF ALL CITY OWNED PROPERTY** The Request for Interest and Qualifications for Tangible Real Estate Assessment and Portfolio Strategy, Request for Qualifications No. 05/19/08-RFQ-CM, was for analysis of all City owned property. The analysis would examine all city owned lands, buildings, leases, easements, improvements, and mineral rights and identify city owned residential, commercial, industrial and recreational properties. Development of a Reconstructed Operating Statement could be required based on the nature of the property which utilized current and projected income and expenses to establish operating losses or profits. A Risk Identification Model identifying capital, operating and static risks would be created to identify City owned properties that posed a risk and to identify properties or real estate projects that would require significant additional capital or management beyond budgeted estimates. The analysis would include appraisal services that related to the objectives of the City and may include specialized marketing, feasibility study work, analysis, opinions and conclusions in connection with real estate counseling or consulting. The resulting Portfolio Strategy would establish the productivity value of City owned property, the value in providing key City services, and recommendations on which properties to retain, lease, sell or transfer.

**NO. 35B FIFTH AMENDMENT TO FOOD AND BEVERAGE SERVICE MANAGEMENT AGREEMENT WITH BOSTON CONCESSIONS GROUP, INC. FOR TEMPORARY OPERATION OF THE RESTAURANT AT EASTWOOD CLUBHOUSE** The Fifth Amendment to the Food and Beverage Service Management Agreement with Boston Concessions Group, Inc. was for temporary operation of the restaurant at Eastwood Clubhouse, 4600 Bruce Herd Lane, effective June 1, 2008, through September 30, 2008. The Fifth Amendment provided the City would guarantee minimum gross revenue, in the amount of \$4,250.00, for the four month period or \$1,062.50 per month. The guaranteed minimum gross revenue ensured that basic operating expenses of the operator were funded during the four month period. The temporary agreement with Boston Concessions would ensure no lapse in the operation of the restaurant and food service for customers at Eastwood Golf Course.

**MOTION FOR CONSENT AGENDA** It was moved by Councilman Simms, seconded by Councilman Henderson and unanimously carried to approve the Consent Agenda with the exception of Item Nos. 19, 25, 29,

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30, and 31. The same were approved as written and the various officials were hereby authorized and directed to take such action as may be necessary to give effect to the recommendations.

**REMOVED FROM CONSENT AGENDA BY COUNCILMAN FLANDERS:  
NO. 19 CONSTRUCTION MANAGER AT RISK – CONTINUING  
CONTRACT, REQUEST FOR QUALIFICATIONS  
NO. 08/17/07-RFQ-PW, WITH LODGE CONSTRUCTION, INC.**

Councilman Flanders stated that he had a conflict of interest regarding the Construction Manager at Risk – Continuing Contract, Request for Qualifications No. 08/17/07-RFQ-PW, with Lodge Construction, Inc. to perform various city-wide construction management projects and services, effective for 3 years. It was moved by Councilman Henderson, seconded by Councilman Simms and carried to approve the Construction Manager at Risk – Continuing Contract, Request for Qualifications No. 08/17/07-RFQ-PW, with Lodge Construction, Inc. was to perform various city-wide construction management projects and services, effective for 3 years. Councilman Flanders abstained due to a possible conflict of interest.



#19

**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Michael Flanders, hereby disclose that on May 19, 2008.

(a) A measure came or will come before my agency which (check one)

Inured to my special private gain or loss;

Inured to the special gain or loss of my business, Dean Street Properties, Inc.;

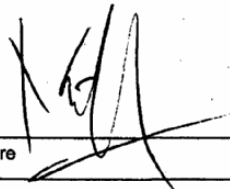
Inured to the special gain or loss of my relative, \_\_\_\_\_;

Inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or

Inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Myself and the owners of Lodge Construction are principals in the company of Dean Street Properties, Inc.

Date Filed 5-19-08 Signature 

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

**REMOVED FROM CONSENT AGENDA BY COUNCILMAN FLANDERS: NO. 25 CHANGE ORDER AGREEMENT NO. 6 TO PROFESSIONAL SERVICES AGREEMENT - DOWNTOWN UTILITY & STREETScape IMPROVEMENT PROJECT, REQUEST FOR QUALIFICATIONS NO. 306-02 WITH DYER, RIDDLE, MILLS & PRECOURT, INC. FOR DOWNTOWN UTILITY AND STREETScape POST DESIGN SERVICES FOR PHASE K-3** Councilman Flanders stated that Change Order Agreement No. 6, in the amount of \$1,451,672.00, to the Professional Services Agreement - Downtown Utility & Streetscape Improvement Project, Request for Qualifications No. 306-02 with Dyer, Riddle, Mills & Precourt, Inc. for Downtown Utility and Streetscape Post Design Services for Phase K-3 increased the total project cost to \$4,641,741.00 and increased contract time by 640 days. Councilman Flanders stated that there should be a registered architect on the Dyer, Riddle, Mills & Precourt, Inc. team to ensure that everything was compliant with the American with Disabilities Act. Saeed Kazemi, City Engineer, Engineering Division, Public Works Department, stated that BSSW Architects, Inc. was overseeing American with Disabilities compliance under a separate contract. Councilman Flanders stated that Dyer,

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Riddle, Mills & Precourt, Inc. should evaluate the streetscape and pedestrian intersection at Monroe Street and Bay Street. Councilman Flanders stated that the car stops had been relocated and the pedestrian crosswalks were awkward because one side of Bay Street was a two (2) lane road and the other side was a three (3) lane road. Councilman Flanders stated that the City should mandate that the fire hydrants, streetlights, and palm trees were installed vertically and not leaning. Councilman Flanders stated that the fire hydrants should be located on the back side of the public sidewalk or in alignment with palm planters to avoid twenty-five (25) feet of yellow, no parking curbing and eliminate a parking space. Councilman Flanders stated that Dyer, Riddle, Mills & Precourt, Inc. should make a recommendation to exchange the black streetscape fixtures in the Lee County Justice Center block to the gray historic fixtures that were used in the downtown streetscape project. Councilman Flanders stated that it may be possible to utilize the black light poles in other areas of the City. Councilman Flanders stated that the overhead traffic signals should be minimized at intersections downtown. Councilman Flanders stated that the new streetscape downtown was being damaged by construction equipment. Councilman Flanders stated that the damage to previously installed streetscape due to construction may extend beyond the twelve (12) month warranty. Councilman Flanders stated that if the warranty did not cover the damage, the City would be required to make repairs. Mr. Kazemi stated that the City had not accepted final construction from Kraft Construction Company, Inc. and they were responsible for any damages. Mr. Kazemi stated that the construction was substantially accepted to open the areas to traffic and the City was aware of most of the damage. Mr. Kazemi stated that the source of the damage would be reviewed and repairs made before the final acceptance. Councilman Flanders stated that the damage should be corrected before the street opened. It was moved by Councilman Flanders and seconded by Councilman Henderson to approve Change Order Agreement No. 6, in the amount of \$1,451,672.00, to Professional Services Agreement – Downtown Utility & Streetscape Improvement Project, Request for Qualifications No. 306-02 with Dyer, Riddle, Mills & Precourt, Inc. for Downtown Utility and Streetscape Post Design Services for Phase K-3 and take the above items into consideration. Mr. Kazemi stated that the change orders were part of the Capital Improvement Plan. Mr. Kazemi stated that the contract was designed as one (1) project. Mr. Kazemi stated that due to the economy, cost, and size of the project the decision was made to do the project in phases. Mr. Kazemi stated that the change orders were based on the additional work given to the contractor. Mr. Kazemi stated that when additional work was requested, Dyer, Riddle, Mills & Precourt, Inc. would continue to do inspections on the project. Mr. Kazemi stated that the design was completed as part of entire project. Mr. Kazemi stated that inspections were negotiated by phases. Mr. Kazemi stated that the project should be completed by November 2009. Councilman Flanders stated that the total contract for the project was 640 days. It was moved by Councilman Flanders, seconded by Councilman Henderson and unanimously carried to approve Change Order Agreement No. 6, in the amount of \$1,451,672.00, to Professional Services Agreement – Downtown Utility & Streetscape Improvement Project, Request for Qualifications No. 306-02, with Dyer, Riddle, Mills & Precourt, Inc., for Downtown Utility and Streetscape Post Design Services for Phase K-3 increasing the total project cost to \$4,641,741.00, increasing contract time by 640 days, and take the above items into consideration. .

**REMOVED FROM CONSENT AGENDA BY MAYOR HUMPRHEY:  
NO. 29 CERTIFICATE OF TITLE FROM CLERK OF THE LEE COUNTY  
CIRCUIT COURT FOR FORECLOSED PROPERTY LOCATED AT  
2716 LARMIE STREET FOR INFILL DEVELOPMENT OF  
AFFORDABLE HOUSING AND RELEASE OF ALL CITY LIENS** Mayor  
Humphrey stated that the Certificate of Title from the Clerk of the Lee  
County Circuit Court for 2716 Larmie Street would be used for infill

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development. Mayor Humphrey stated that the property was described as follows:

Lot 29, Block 19, in that certain subdivision known as Evans Second Addition to the City of Fort Myers, as per map or plat thereof and recorded in the Office of the Clerk of the Circuit Court of Lee County, State of Florida, in Plat Book 2, at Page 1A.

Mayor Humphrey stated that the City obtained the parcel by foreclosure for unpaid code enforcement liens. Mayor Humphrey stated that the unpaid City liens would be released and the lot would be used to construct a single-family, owner-occupied residence that conformed to the City Affordable Housing Standards. Mayor Humphrey stated that Pastor Raymond Davis, New Life Hope Assembly, 3244 South Street, indicated that in August 2005 the property at 2716 Larmie Street was transferred to the church and was not yet deeded. Mayor Humphrey stated that the property referred to in the August 1, 2005, minutes was 2607 Larmie Street. It was moved by Councilman Simms, seconded by Councilman Streets and unanimously carried to accept Certificate of Title for property located at 2716 Larmie Street from Lee County Clerk of the Circuit Court and authorize release of all unpaid City liens to use property for infill development of affordable housing.

**REMOVED FROM CONSENT AGENDA BY MAYOR HUMPHREY:  
NO. 30 CERTIFICATE OF TITLE FROM CLERK OF THE LEE COUNTY  
CIRCUIT COURT FOR FORECLOSED PROPERTY LOCATED AT  
2578 LARMIE STREET FOR INFILL DEVELOPMENT OF  
AFFORDABLE HOUSING AND RELEASE OF ALL CITY LIENS**

Mayor Humphrey stated that a Certificate of Title for 2578 Laramie Street was received from the Clerk of the Lee County Circuit Court. Mayor Humphrey stated that the property was described as follows:

Lot 43, Block 19, Evans Addition No. 2 according to map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court of Lee County, State of Florida, in Plat Book 2, Page 1A, Public Records of Lee County, Florida.

Mayor Humphrey stated that the City obtained the parcel by foreclosure for unpaid code enforcement liens. Mayor Humphrey stated that the unpaid City liens would be released and the lot would be used to construct a single-family, owner-occupied residence that conformed to the City Affordable Housing Standards. Mayor Humphrey stated that Pastor Raymond Davis, New Life Hope Assembly, 3244 South Street, indicated that in August 2005 the property at 2578 Larmie Street was transferred to the church and was not yet deeded. Mayor Humphrey stated that the property referred to in the August 1, 2005 minutes was 2607 Larmie Street. It was moved by Councilman Simms, seconded by Councilman Streets and unanimously carried to accept Certificate of Title for property located at 2578 Larmie Street from Lee County Clerk of the Circuit Court and authorize release of all unpaid City liens to use property for infill development of affordable housing.

**NO. 41 ESTABLISH UTILITY OFFERED SOLAR THERMAL SERVICE**

Councilman Wright stated that solar thermal service would reduce the carbon footprint of the City, create green collar jobs, save money and create a revenue stream. Councilman Wright stated that Mayor Humphrey signed the Mayor's Initiative across the country to reduce carbon footprint as part of a green initiative. Councilman Wright stated that the technology was used in the 1920s and there were thermal conductive plants in Miami at that time. Carol Newcomb Jones, representing Del Jones, stated that solar thermal service was for domestic hot water. Ms. Jones stated that solar water heating was a cost effective and pollution free technology that cost a fraction of solar electric

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systems. Ms. Jones stated that benefits of solar thermal service utilities would fulfill a commitment to clean and sustainable buildings by reducing the average home energy use by 20 to 30 percent by installing a solar hot water system on the roof. Ms. Jones stated that Climate Protection Agreement attempted to meet the Kyoto Protocol objective in towns and cities throughout the United States. Ms. Jones stated that one of the agreements was to reduce by seven (7) percent the greenhouse gas emissions from 1990 levels by 2012. Ms. Jones stated that 20 to 30 percent of total household electric consumption was to heat water. Mr. Jones stated that a 4.2 person household used 66.2 gallons per day of heated water. Ms. Jones stated that solar installers would be hired to install solar systems on each house. Ms. Jones stated that the unemployment in the building industry would be repurposed. Ms. Jones stated that people could be trained to be installers of the technology. Ms. Jones stated that the money collected remained in the local economy as opposed to spending money on foreign sources of fuel. Ms. Jones stated that solar thermal utilities created a new revenue stream in service in the form of revenue share with a delivery partner and sale of renewable energy certificates. Ms. Jones stated that there was a direct energy capacity reduction for diversified demand of solar water heating. Ms. Jones stated that a solar thermal utility demonstrated environmental leadership and enhanced public reputation. Ms. Jones stated that people with solar thermal hot water systems would have the ability to use solar energy to deliver 20 to 30 percent of energy required for the house. Ms. Jones stated that an offset of the usage of electricity was a benefit to reduce greenhouse gas emissions and an adverse effect on the environment through climate change or global warming. Ms. Jones stated that there was no premium paid to utilize solar thermal utility. Ms. Jones stated that the homeowner would change from fossil fuel to non-fossil fuel. Ms. Jones stated that as electric bills increase, thermal solar energy would remain the same at approximately \$.11 per kilowatt hour. It was moved by Councilman Wright and seconded by Councilman Henderson to have City personnel review solar thermal utility service. Mayor Humphrey stated that there should be a requirement for solar panels on new houses. Ms. Jones stated that the City would place the cost of thermal solar on the water bill. Ms. Jones stated that the usage was metered and added to the water bill. Councilman Wright stated that customers would be charged for the amount of hot water used. It was moved by Councilman Wright, seconded by Councilman Henderson and unanimously carried for City personnel to review solar thermal utility service and explore making it a requirement for new houses in the City Code.

**NO. 42A EAST FORT MYERS RESOURCES** Councilman Wright stated that some of the highest incidents of crime in the City took place in Ward 1, an urban, dense area. Councilman Wright stated that Ward 1 had high instances of violent crime and one of the highest juvenile crime rates. Councilman Wright stated that the location of Schandler Hall, 419 Florence Avenue, in Lee County and the S.T.A.R.S. Complex, 2980 Edison Avenue, in the City required juveniles to cross four (4) and six (6) lanes of traffic to get to either facility. Councilman Wright stated that there was one neighborhood watch program in Ward 1 two and one-half years ago and which had increased to nine (9). Councilman Wright stated that City personnel had been attending the nine (9) neighborhood watch programs which resulted in a 17% decrease in burglaries and car break-ins. Councilman Wright stated that services and amenities were lacking in Ward 1. Councilman Wright stated that Ward 1 had the highest amount of rental property and low-income affordable housing project was being constructed. Councilman Wright stated that home owners would take care of the property. Councilman Wright stated that the Billy's Creek Filter Marsh Passive Park was being created which would have bicycle paths and a canoe launch and other amenities which would make a difference. Councilman Wright stated that there were no services at Billy Bowlegs Park, 951 Marsh Avenue,

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except fields and the Boys & Girls Club of Greater Lee County was anticipating building a facility in the area. Councilman Wright stated that the Boys & Girls Club of Greater Lee County had a structure designed and completed a needs assessment for the area. Councilman Wright stated that the Boys & Girls Club of Greater Lee County anticipated the project to be \$3,000,000.00. Councilman Wright stated that City Council should reconsider not only leasing the property to the Boys & Girls Club of Greater Lee County but assist in locating funding sources. Councilman Wright stated that five (5) luxury high rise condominium towers had been built for \$250,000,000.00 and focus should be on the east section of the City. Councilman Wright stated that a meeting was held with Commissioner Brian Bigelow, Lee County Board of County Commissioners, representatives from the Lee County Sheriff's Department, representatives from the Police Department, and the City Manager to discuss the problem. Councilman Wright stated that during the meeting Chief Hilton Daniels, Police Department, indicated the three (3) things that had to be resolved to reach a solution were jobs, recreation, and blight. Councilman Wright stated that without resolving the issues of jobs, recreation, and blight the cycle would continue. Councilman Wright stated that the most effective solution would be to create a resolution to request Lee County to participate in a task force to review jobs, recreation, and blight. Councilman Wright stated that the City did not have funds to demolish condemned houses and Lee County may be able to assist. Mayor Humphrey stated that additional parks and recreational areas were needed within the neighborhoods for juveniles. Mayor Humphrey stated that sources of funding could be researched based on recommendations from the joint task force with Lee County. Mayor Humphrey stated that Lee County had funds available that could be used in the area which may require a match by the City. Mayor Humphrey stated that the east Fort Myers resources should be a priority because of what was happening to the neighborhood and the safety and welfare of the residents. Councilman Wright stated that the recreation facilities were on the north side of Palm Beach Boulevard and the majority of juvenile crime was between Palm Beach Boulevard and Dr. Martin Luther King Jr. Boulevard. Councilman Flanders stated that Terry Park, 3410 Palm Beach Boulevard, could be an opportunity for additional recreational facilities. Councilman Wright stated that Lee County would be more interested in facilities near the City limits. No action was taken.

**NO. 36 CONTINUED PUBLIC HEARING: SEVENTH READING - ORDINANCE NO. 3408 MODIFYING THE DEVELOPMENT ORDER FOR SUN CITY FORT MYERS, ORDINANCE NO. 2984 QUASI-JUDICIAL** Pursuant to advertisement in The News Press, issue of June 1, 2007, Affidavit of Publication on file, the public hearing continued from June 20, 2007, August 13, 2007, October 1, 2007, November 19, 2007, and February 19, 2008, was held at this time on modifying the Development Order for Sun City Fort Myers by changing the name to Pelican Preserve Development of Regional Impact and include 417 acres, more or less, annexed in 2004. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title for the seventh reading an ordinance as hereinafter set out entitled:

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### **ORDINANCE NO. 3408**

#### **AN ORDINANCE TO BE ENTITLED:**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, MODIFYING ORDINANCE NO. 2984 BY ISSUING AN AMENDMENT TO THE DEVELOPMENT ORDER FOR SUN CITY FORT MYERS, NOW KNOWN AS PELICAN PRESERVE, A DEVELOPMENT OF REGIONAL IMPACT LOCATED EAST OF INTERSTATE NO. 75 IN SECTIONS 1 AND 2, TOWNSHIP 45 SOUTH, RANGE 25 EAST AND SECTION 35, TOWNSHIP 44 SOUTH, RANGE 25 EAST TO ADD A 417 ACRE, MORE OR LESS, PARCEL INCREASE TO THE RESIDENTIAL BY 500 UNITS, ELIMINATE FORTY (40) RECREATIONAL HOMES, DECREASE OFFICE SQUARE FOOTAGE BY 5,000 SQUARE FEET, AND ELIMINATE 30 HOTEL UNITS, PROVIDING FOR A BIENNIAL MONITORING REPORT, AND INCLUDING ADDITIONAL ENVIRONMENTAL CONDITIONS AND ADMINISTRATIVE REQUIREMENTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Leonardo stated that a meeting was held with Diane Kerper and Barry Ernst, two (2) executives of WCI, Inc. and Paul Fish, member of the Executive Group of the Pelican Preserve Residents Alliance, at the Pelican Preserve Sales Center on May 3, 2007, and discussed issues of the ordinance, in particular Cypress Grove Road, the road that WCI, Inc. wanted to build between Pelican Preserve Boulevard and Gateway Boulevard. Councilman Leonardo stated that a phone conversation was held with Tony Pires, Gateway Services District, on May 9, 2007, to discuss Cypress Grove Road and the full assessment against residents Pelican Preserve if Cypress Grove Road was built. Councilman Leonardo stated that a phone conversation was held with Barry Ernst on May 10, 2007, to discuss WCI, Inc. discussing Cypress Grove Road. Councilman Leonardo stated that a meeting was held in the City Hall Legal Library with Grant W. Alley, City Attorney, Leslie Persia, Planner, Planning Division, Community Development Department, Barry Ernst, WCI, Inc. and Neale Montgomery, Esquire, Pavese Law Firm, representing WCI, Inc. on May 18, 2007, to discuss Ordinance Nos. 2984 and 3408 in their totality. Councilman Leonardo stated that several meetings had been held with residents of Pelican Preserve throughout 2007. Councilman Henderson stated that he did not have any exparte communication regarding the Pelican Preserve Development of Regional Impact since the last public hearing. Councilman Flanders stated that he did not have any exparte communication regarding the Pelican Preserve Development of Regional Impact. Mayor Humphrey stated that a meeting was held with Barry Ernst and another gentleman, WCI, Inc., to discuss principally Ordinance No. 3408 and Ordinance No. 3443. Mayor Humphrey stated that the discussion pertained to the east-west road, golf cart path, and the deceleration lane to encourage them to come to a resolution understanding the citizens and their issues. Mayor Humphrey stated that WCI, Inc. was advised to meet with the citizens group. Mayor Humphrey stated that there was a subsequent meeting with representatives of Pelican Preserve. Mayor Humphrey stated that he met with representatives of Pelican Preserve and discussed the public hearing and requested that residents designate a speaker and more than four minutes could be given to speak and expedite the matter. Mayor Humphrey stated that Pelican Preserve residents were encouraged to review the records at the Regional Planning Council offices. Mayor Humphrey stated that he met with Pelican Preserve residents recently to review their findings at the Regional Planning Council office and facts associated with the original development orders for Gateway and the time

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element. Mayor Humphrey stated that the residents of Pelican Preserve provided documents to formulate a timeline. Mayor Humphrey stated that he had a telephone conversation with the attorney for WCI, Inc. to discuss denying Ordinance No. 3408 and continue Ordinance No. 3442. Councilman Simms stated that he did not have any ex parte communication regarding the Pelican Preserve Development of Regional Impact since the last public hearing. Councilman Streets stated that he did not have any ex parte communication regarding the Pelican Preserve Development of Regional Impact since the last public hearing. Councilman Wright stated that he did not have any ex parte communication regarding the Pelican Preserve Development of Regional Impact since the last public hearing. Mayor Humphrey stated that public input would be received for Ordinance Nos. 3408 and 3442 at the same time under Item No. 37. It was moved by Councilman Henderson, seconded by Councilman Leonardo and unanimously carried to continue the public hearing to October 20, 2008.

**NO. 37 CONTINUED PUBLIC HEARING: THIRD READING - ORDINANCE NO. 3442 AMENDING PHASING, BUILDOUT, AND TERMINATION DATES OF SUN CITY FORT MYERS DEVELOPMENT OF REGIONAL IMPACT, NOW KNOWN AS PELICAN PRESERVE, LOCATED EAST OF INTERSTATE 75 AND SOUTH OF COLONIAL BOULEVARD, AS REQUESTED BY WCI COMMUNITIES, INC., OWNER** Pursuant to advertisement in The News Press, issue of February 8, 2008, Affidavit of Publication on file, the public hearing continued from February 25, 2008, was held at this time on amending phasing, buildout, and termination dates for Sun City Fort Myers Development of Regional Impact, now known as Pelican Preserve, located east of Interstate 75 and south of Colonial Boulevard, as requested by WCI Communities, Inc., owner, by extending the buildout date from December 31, 2010, to December 31, 2013, the build out date from December 31, 2011, to December 31, 2014, the second phase from 2010 to 2013, and the prohibition of down zoning from 2011 to 2014. . Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title, for the third reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3442

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING ORDINANCE NO. 2984, THE DEVELOPMENT ORDER FOR THE SUN CITY FORT MYERS, A DEVELOPMENT OF REGIONAL IMPACT LOCATED EAST OF INTERSTATE NO. 75 IN SECTIONS 1 & 2, TOWNSHIP 45 SOUTH, RANGE 25 EAST AND SECTION 35, TOWNSHIP 44 SOUTH, RANGE 25 EAST; BY EXTENDING THE DATES FOR BUILDOUT, PHASING, AND EXPIRATION PROVIDED THEREIN; PROVIDING FOR LEGAL STATUS, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

Attorney Alley stated that the public hearing for Ordinance No. 3442 was to extend the Development of Regional Impact buildout and phasing dates. Attorney Alley stated that Florida Statutes granted the extension to existing Developments of Regional Impact. Attorney Alley stated that the City acknowledged the extension through an ordinance and Ordinance Nos. 2498 and 3442 could be heard at the same time. Attorney Alley stated that there were requirements of the quasi-judicial hearing where City personnel recommended the continuance of the public hearing to October 20, 2008 for Ordinance No. 3442. Attorney Alley stated that it was a best practice for the applicant to seek

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acknowledgement from the local government for the time extension and it was good for enforcement purposes. Nancy Heberle, Deputy City Clerk, administered the oath to those persons that intended to give testimony during the public hearing. Anthony P. Pires, Jr., Esquire, Woodward, Pires & Lombardo, P.A., representing the Gateway Services Community Development District, stated that Gateway Services Community Development District was the water and sewer utility provider for the 417 acre, more or less, area. Attorney Pires stated that he would object to action that would have an impact on the Gateway Services Community Development District. Paul Fish, 10511 Bella Vista Drive, stated that the issues for residents of Pelican Preserve included the proposed road through Pelican Preserve from Treeline Avenue to Gateway Boulevard, the deceleration lane northbound on Treeline Avenue to turn right onto Pelican Preserve Boulevard, and golf cart paths from the residential to the commercial areas of Pelican Preserve. Mr. Fish stated that representatives of the Lee County Metropolitan Planning Organization opined that there were no regional requirements for Cypress Grove Road and any review was under the purview of the City. Mr. Fish stated that the Gateway Development of Regional Impact and the Pelican Preserve Development of Regional Impact were reviewed by the Southwest Florida Regional Planning Council. Mr. Fish stated that documents covering the time frame from the beginning of the Gateway Development of Regional Impact had been reviewed at the Lee County Planning Department. Mr. Fish stated that a meeting was held with representatives from WCI, Inc. Mr. Fish stated that WCI, Inc. applied for permitting and allocated funds in the Gateway Community Development District for the turn lane. Mr. Fish stated that the Gateway Community Development District did not have a performance bond for the turn lane. Mr. Fish stated that a decision was made by the Gateway Community Development District to return the unused value of the bond. Mr. Fish stated that there was enough value remaining in the bond to complete the work in Phase I of Pelican Preserve for which the City held performance bonds. Mr. Fish stated that WCI, Inc. indicated that the turn lane would be completed at the end of 2008 or early 2009. Mr. Fish stated that an agreement had been reached on the golf cart operating rules for the residential areas of Pelican Preserve. Mr. Fish stated that there was not an agreement about the use of golf carts between the residential and commercial areas of Pelican Preserve. Mr. Fish stated that permitting of the golf cart use between the residential and commercial areas was a lengthy process and the residents of Pelican Preserve would participate. Mr. Fish stated that agreement had not been reached concerning Cypress Grove Road. Mr. Fish stated that the residents of Pelican Preserve maintained the position that the road had no regional significance and must not be opened to Gateway Boulevard except in emergencies. Mr. Fish stated that Metropolitan Planning Organization adopted Highway Element of the 20/30 Plan indicated that Arborwood Parkway was proposed and reviewed by the Southwest Florida Regional Planning Council that replaced Cypress Grove Road through Pelican Preserve. Mr. Fish stated that a portion of Arborwood Parkway and Commerce Lakes Drive was constructed and it was possible to drive from Treeline Avenue to Gateway Boulevard without utilizing Daniels Parkway or Colonial Boulevard. Mr. Fish stated that the portion of Arborwood Parkway not completed would connect to Gateway Boulevard further north. Mr. Fish stated that the uncompleted section of Arborwood Parkway went through the 417 acres, more or less, and was a City right-of-way and the City would determine when the uncompleted section of Arborwood Parkway would be constructed. Mr. Fish stated that the initial plan was for Gateway Boulevard to not connect to State Road 82 at the northern end, but to connect to Treeline Avenue and the plan changed when Pelican Preserve was developed. Mr. Fish stated that a document obtained from the Metropolitan Planning Organization indicated that Lee County requested a deletion of Gateway Boulevard Extension from Treeline Avenue to Gateway Boulevard on the plan. Mr. Fish stated that it was decided that Gateway Boulevard would intersect with State Road 82 instead of

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Treeline Avenue. Mr. Fish stated that the update to the Lee County Transportation Plan indicated that the two sections of Gateway Boulevard to Treeline Avenue had been blocked by the Sun City development approval. Mr. Fish stated that the Metropolitan Planning Organization 20/20 Plan indicated Arborwood Parkway and Arborwood Parkway Extension provided connection between Treeline Avenue and State Road 82 and Gateway Boulevard. Mr. Fish stated that Pelican Preserve was not involved in those road issues. Mr. Fish stated that the Lee County Metropolitan Planning Organization 20/30 Long Range Transportation Plan indicated the same road development as the Metropolitan Planning Organization 20/20 Plan. Mr. Fish stated that an Administrative Amendment to the Gateway Planned Unit Development in October 2005 requested that Lee County permit 4 golf holes in the undeveloped 417 acres, more or less, and approved a temporary construction road which followed the alignment of the future Cypress Grove Drive across Pelican Preserve. Mayor Humphrey stated that 4 of the 27 golf holes in Pelican Preserve were located in the 417 acres. Mr. Fish stated that the road was approved with the condition the use of the future Cypress Grove Drive was temporary construction road permitted for a maximum of three (3) years from the date of approval of the Administrative Amendment and an extension beyond three (3) years would require approval from the City. Mr. Fish stated that the three (3) years expired in October 2008.

Councilman Wright left the meeting at 6:07 o'clock p.m.

Mr. Fish stated that the road was not permitted for any use other than construction and WCI, Inc. built it under those conditions with no further expectations. Mr. Fish stated that WCI, Inc. had asserted that the road through Pelican Preserve was based on a traffic study completed when the Pelican Preserve development began.

Councilman Wright returned to the meeting at 6:08 o'clock p.m.

Mr. Fish stated that the response from WCI, Inc. to questions from the Southwest Florida Regional Planning Council when Sun City Development of Regional Impact was proposed indicated, in part, as follows:

. . . that the proposed east-west connector road was not included in the E+C roadway network because it was not committed for construction in the next three (3) years and is not reflected on the updated Development of Regional Impact traffic study. . .

Mr. Fish stated that there was no independent evidence that an east-west road was included on a traffic study. Mr. Fish stated that the traffic study on file at the Southwest Florida Regional Planning Council in the application for the Sun City Development of Regional Impact indicated there would be 24,000 trips per day on the east-west road. Mr. Fish stated that there would 2,500 houses at buildout that would generate 9 plus trips per day per house. Councilman Leonardo stated that there were 169 trips in and out per day at the main Pelican Preserve gate from Treeline Avenue in October 2007. Mr. Fish stated that recent objective traffic data was obtained as part of the annual reporting requirements of the Sun City Development of Regional Impact which showed 387 trips in and out of Pelican Preserve during rush hour. Mr. Fish stated that the number of trips after buildout would be less than 44 percent of the predicted trips. Mr. Fish stated that the 387 trips included construction traffic which would not be present at build out, 88 trips from Colonial Boulevard to Sweetbay Shopping Center, and 130 trips from Treeline Avenue to Sweetbay Shopping Center. Mr. Fish stated that there were 169 actual trips through the Pelican Preserve gate or less than three per minute. Mr. Fish stated that the primary effort of

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Pelican Preserve residents was to prevent access to anyone who had not passed the scrutiny of a guarded gate and allow a second entry/exit for emergency vehicles. Mr. Fish stated that the public hearing should be continued. Mr. Fish stated that a meeting between City personnel and the residents of Pelican Preserve should be scheduled to share research and develop an action plan. Mr. Fish stated that Cypress Grove Drive had no regional impact because of the Metropolitan Planning Organization 20/30 Plan and the size and nature of Cypress Grove Drive was solely the decision of the City. Mr. Fish stated that the road was permitted by Lee County as a temporary construction road for three (3) years and the document expressly indicated that future permitting was under purview of the City. Mr. Fish stated that there was no platting that took Cypress Grove Drive to the boundary of the current Pelican Preserve. Mr. Fish stated that the requirement for the turn lane should be expressly written into the Sun City Development of Regional Impact with a date certain for completion with reasonable conditions for unforeseen circumstances and prescribed penalties for failure to comply. Mr. Fish stated that the golf cart requirements should clearly specify distinction between commercial and residential areas. Mr. Fish stated that Lee County indicated Treeline Avenue north of the fire station was not under Lee County jurisdiction.

Councilman Flanders left the meeting at 6:17 o'clock p.m.

Chris Van Hise, Esquire, Abel Band Law Firm, representing Dick Hargrave and Fran Miller, residents of Pelican Preserve, stated that there was a concern because Ordinance No. 3442 had a different standard of review from the quasi-judicial standard of competent substantial evidence.

Councilman Flanders returned to the meeting at 6:19 o'clock p.m.

Attorney Van Hise stated that a meeting should be held with City personnel to provide the research completed by his clients. Neale Montgomery, Esquire, Pavese Law Firm, representing WCI, Inc., stated that Ordinance No. 3442 provided for a mandatory three (3) year time extension adopted by the Florida legislature. Attorney Montgomery stated that time extensions have been approved for The Forum, Metro Park Development of Regional Impact, Gateway Development of Regional Impact, and Omni Development of Regional Impact. Attorney Montgomery stated that the extension request was the same as other Developments of Regional Impact had requested and received. Attorney Montgomery stated that the Notice of Proposed Change application was withdrawn by the applicant at the City, Department of Community Affairs, and Southwest Florida Regional Planning Council. Attorney Montgomery stated that a Notice of Proposed Change must be submitted to the City, Department of Community Affairs, and Southwest Florida Regional Planning Council because it was a multi-jurisdictional application. Attorney Montgomery stated that the withdrawal of the application had been acknowledged by the Southwest Florida Regional Planning Council and Department of Community Affairs so there was no pending application upon which the City could act. Attorney Montgomery stated that WCI, Inc. retained a consultant who would be submitting a limited development order to Lee County. Attorney Montgomery stated that Treeline Avenue was a Lee County road and a limited development order had to be submitted to Lee County. Attorney Montgomery stated that WCI, Inc. presented residents of Pelican Preserve a program for internal golf cart paths. Attorney Montgomery stated that the remaining issue for golf cart paths was obtaining access across a public right-of-way to Sweetbay Supermarket. Attorney Montgomery stated that access to Sweetbay Supermarket was not a requirement of WCI, Inc. Attorney Montgomery stated that the residents of Pelican Preserve could pursue the permitting process for golf cart paths across Treeline Avenue with Lee County who had jurisdiction of Treeline

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Avenue. Attorney Montgomery stated that it was not unusual for roads to be removed from or not included in Long Range Transportation Plans when the roads were funded by private developers. Attorney Montgomery stated that Cypress Grove Drive connecting to Gateway Boulevard was reflected within the Sun City Development of Regional Impact. Attorney Montgomery stated that Dan Trescott, Principal Planner, Southwest Florida Regional Planning Council, ascertained the Sun City Development of Regional Impact did not and should not be amended to remove the condition but if the condition was changed, a Notice of Proposed Change would be required and the Southwest Florida Regional Planning Council would not agree to that request. Attorney Montgomery stated that whenever was done regarding changes to the 417 acres, more or less, owned by WCI, Inc., due process required that the applicant be noticed and made part of the meeting. Mayor Humphrey stated that the residents of Gateway and Pelican Preserve should continue to negotiate a resolution while protecting the rights and responsibilities of the City and residents. Attorney Montgomery stated that there was nothing additional to disclose regarding compensation offered to support or not object to the project. It was moved by Councilman Leonardo, seconded by Councilman Henderson and unanimously carried to continue the public hearing to October 20, 2008.

**NO. 38 CONTINUED PUBLIC HEARING: SEVENTH READING - ORDINANCE NO. 3426 APPROVING A PLANNED UNIT DEVELOPMENT FOR LEE COUNTY JUSTICE CENTER PARKING GARAGE, 2120 DR. MARTIN LUTHER KING JR. BOULEVARD REQUESTED BY THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS (QUASI-JUDICIAL)** Pursuant to advertisement in The News Press, issue of November 9, 2007, Affidavit of Publication on file, the public hearing continued from November 19, 2007, December 3, 2007, December 17, 2007, and February 4, 2008, was held at this time on a planned unit development for Lee County Justice Center Parking Garage, 2120 Dr. Martin Luther King Jr. Boulevard as requested by Lee County Board of County Commissioners, owner. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title, for the seventh reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3426

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, APPROVING A PLANNED UNIT DEVELOPMENT FOR THE LEE COUNTY JUSTICE CENTER PARKING GARAGE, 2120 DR. MARTIN LUTHER KING JR. BOULEVARD, LOCATED SOUTH OF DR. MARTIN LUTHER KING JR. BOULEVARD, BETWEEN COTTAGE STREET AND MONROE STREET, IN SECTION 13, TOWNSHIP 44 SOUTH, RANGE 24 EAST, FORT MYERS, LEE COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Humphrey stated that the property was described as follows:

A parcel of land lying in Sections 13 and 24, Township 44 South, Range 24 East, City of Fort Myers, Lee County, Florida, being more particularly described as follows:

PARCEL 1

Commence at the southwest corner of said Section 13; thence run North 01°04'05" West, along the west line of the Southwest Quarter (SW ¼) of said Section 13 for a distance

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of 58.00 feet; thence run North 89°09'40" East, for a distance of 76.17 feet to the point of bearing of the parcel of land herein described, said point being a point on a circular curve concave southeast, whose radius point bears South 68°16'34" East a distance of 366.50 feet therefrom; thence run northeasterly along the arc of said curve to the right, having a radius of 366.50 feet, through a central angle of 18°06'17", subtended by a chord of 115.33 feet at a bearing of North 30°46'35" East, for an arc length of 115.81 feet to the end of said curve; thence run North 45°06'00" East for a distance of 220.73 feet; thence run North 44°00'54" East for a distance of 59.70 feet; thence run North 44°51'13" East for a distance of 74.13 feet; thence run North 53°05'50" West for a distance of 5.99 feet; thence run North 45°06'40" East for a distance of 262.97 feet; thence run South 39°28'40" East for a distance of 333.85 feet; thence run South 33°05'37" East for a distance of 51.25 feet; thence run South 39°30'37" East for a distance of 300.73 feet; thence run South 89°04'20" West for a distance of 495.08 feet; thence run North 44°15'20" East for a distance of 2.57 feet; thence run South 89°04'20" West for a distance of 53.90 feet; thence run South 88°33'56" West for a distance of 60.02 feet; thence run South 89°14'30" West for a distance of 135.72 feet; thence run North 83°55'48" West for a distance of 37.07 feet; thence run North 00°50'34" West for a distance of 1.59 feet; thence run South 89°09'40" West for a distance of 13.14 feet; thence run North 83°55'48" West for a distance of 12.14 feet to a point on a circular curve concave south, whose radius point bears South 00°53'01" East, a distance of 517.50 feet therefrom; thence run westerly along the arc of said curve to the left, having a radius of 517.50 feet, through a central angle of 04°15'36", subtended by a chord of 38.47 feet at a bearing of South 86°59'10" West, for an arc length of 38.48 feet to the end of said curve; thence run South 89°09'40" West for a distance of 78.89 feet to the point of beginning of the parcel of land herein described, containing 5.916 acres, more or less.

AND

**PARCEL 2**

Commence at the northwest corner of said Section 24; thence run North 89°05'55" East, along the north line of the Northwest Quarter (NW ¼) of said Section 24 for a distance of 400.75 feet to the point of beginning of the parcel of land herein described ; thence run South 00°44'55" East for a distance of 420.00 feet; thence run South 89°05'55" West for a distance of 351.43 feet; thence run North 00°57'51" West for a distance of 225.21 feet; thence run North 05°27'01" East for a distance of 112.33 feet to the beginning of a tangential circular curve concave southeast; thence run northeasterly along the arc of said curve to the right, having a radius of 80.50 feet, through a central angle of 75°25'30", subtended by a chord of 98.48 feet at a bearing of North 43°09'46" East, for an arc length of 105.97 feet to a point of compound curvature; thence run easterly along the arc of said curve to the right, having a radius of 450.50 feet, through a central angle of 08°13'22", subtended by a chord of 64.60 feet at a bearing of North 84°59'12" East, for an arc length of 64.65 feet to the end of said curve; thence run North 82°08'14" East for a

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distance of 63.90 feet; thence run North 89°00'45" East for a distance of 3.27 feet; thence run North 89°05'55" East for a distance of 140.75 feet to the parcel of beginning of the parcel of land herein described, containing 3.287 acres, more or less.

AND

### **PARCEL 3**

Begin at the northeast corner of Lot 12 of Carl F. Robert's Subdivision, according to plat thereof as recorded in Plat Book 1 at Page 17 of the Public Records of Lee County, Florida; thence run South 01°03'22" East for a distance of 440.30 feet; thence run South 88°54'59" West for a distance of 111.26 feet; thence run North 01°07'14" West for a distance of 67.00 feet; thence run South 89°05'58" West for a distance of 191.75 feet; thence run North 00°44'55" West for a distance of 373.51 feet; thence run North 89°04'20" East for a distance of 301.08 feet to the point of beginning of the parcel of land herein described, containing 2.761 acres, more or less.

AND

### **PARCEL 4**

Begin at the northeast corner of Lot 1 of Monroe Heights according to plat thereof as recorded in Plat Book 1 at Page 43 of the Public Records of Lee County, Florida; thence run South 00°59'41" East for a distance of 890.00 feet; thence run South 89°04'21" West for a distance of 271.14 feet; thence run North 01°03'14" West for a distance of 890.00 feet; thence run North 89°04'20" East for a distance of 272.06 feet to the point of beginning of the parcel of land herein described, containing 5.549 acres, more or less.

This property is subject to easements, reservation and or restriction of record.

Bearings shown herein refer to the north line of the Northwest Quarter (NW ¼) of Section 24, Township 44 South, Range 24 East, Lee County, Florida, as being North 89°05'55" East.

Councilman Wright stated that the planned unit development for the Lee County Justice Center Parking Garage was discussed during a joint meeting with the Lee County Board of County Commissioners on April 10, 2008. Councilman Streets stated that the planned unit development for the Lee County Justice Center Parking Garage was discussed during a joint meeting with the Lee County Board of County Commissioners on April 10, 2008. Councilman Simms stated that the planned unit development for the Lee County Justice Center Parking Garage was discussed during a joint meeting with the Lee County Board of County Commissioners on April 10, 2008. Mayor Humphrey stated that the planned unit development for the Lee County Justice Center Parking Garage was discussed during a joint meeting with the Lee County Board of County Commissioners on April 10, 2008. Councilman Flanders stated that the planned unit development for the Lee County Justice Center Parking Garage was discussed during a joint meeting with the Lee County Board of County Commissioners on April 10, 2008. Councilman Henderson stated that the planned unit development for the Lee County Justice Center Parking Garage was discussed during a joint

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meeting with the Lee County Board of County Commissioners on April 10, 2008. Councilman Leonardo stated that the planned unit development for the Lee County Justice Center Parking Garage was discussed during a joint meeting with the Lee County Board of County Commissioners on April 10, 2008. William P. Mitchell, City Manager, stated that there had been communication from Lee County requesting the public hearing be held on June 2, 2008, instead of June 16, 2008. It was moved by Councilman Flanders and seconded by Councilman Leonardo to continue the public hearing to June 2, 2008. Councilman Flanders stated that Lee County requested a warrant to defer the requirement for the liner buildings along Dr. Martin Luther King Jr. Boulevard with the inclusion of urban pocket park. Councilman Flanders stated that the justification to remove the requirement was detailed and the area would be allocated for a future liner building should be included in the warrant. Councilman Flanders stated that the language in the warrant should ensure that liner buildings would be constructed in the future. Councilman Flanders stated that Lee County indicated that the liner building would be built within three (3) years or the issue of building a liner builder would be reviewed by City Council. Councilman Flanders stated that Lee County was willing to make the commitment for a liner building in the future. It was moved by Councilman Flanders, seconded by Councilman Leonardo and unanimously carried to continue the public hearing to June 2, 2008.

The meeting recessed at 6:35 o'clock p.m.

The meeting reconvened at 6:49 o'clock p.m.

Councilman Henderson left the meeting at 6:49 o'clock p.m.

**NO. 39 PUBLIC HEARING: SECOND READING - ORDINANCE NO. 3466 AMENDING THE LOCAL HOUSING ASSISTANCE PROGRAM**

Pursuant to advertisement in The News Press, issue of May 9, 2008, Affidavit of Publication on file, a public hearing was held at this time on amending the Local Housing Assistance Program. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title for the second reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3466

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 42, HOUSING, ARTICLE II, LOCAL HOUSING ASSISTANCE PROGRAM, DIVISION 1 GENERALLY BY CREATING SECTION 42-31 PURPOSE AND INTENT; AMENDING DIVISION 2. HOUSING FINANCE, SUBDIVISION I. IN GENERAL, SECTION 42-51 DEFINITIONS, SUBDIVISION II, LOCAL HOUSING ASSISTANCE TRUST FUND, SECTION 42-71 CREATED; ADMINISTRATION; DEPOSITS; EXPENDITURES; FINANCIAL STATEMENTS; INTEREST AND EARNINGS, DELETING IN ITS ENTIRETY DIVISION 3., LOCAL HOUSING PARTNERSHIP, AMENDING DIVISION 4. LOCAL HOUSING ASSISTANCE PROGRAM, SECTION 42-112 PURPOSE; DUTIES, SECTION 42-114 PLAN IMPLEMENTATION; SYSTEM OF AWARDS, AND SECTION 42-115 DESIGNATING RESPONSIBILITY FOR IMPLEMENTATION; PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

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There being no one present to be heard, it was moved by Councilman Simms and seconded by Councilman Streets to adopt the ordinance. After due consideration, a roll call vote was taken as follows: Councilman Wright - Aye, Councilman Streets - Aye, Councilman Simms - Aye, Councilman Flanders - Aye, Councilman Leonardo - Aye, and Mayor Humphrey - Aye. Motion was unanimously carried. The ordinance was adopted at 6:52 o'clock p.m.

**No. 40 PUBLIC HEARING: SECOND READING - ORDINANCE NO. 3467 AMENDING THE BICYCLE AND PEDESTRIAN ADVISORY BOARD TO PROVIDE MEMBERS MAY BE A RESIDENT, WORK, OWN PROPERTY, OR OWN A BUSINESS IN THE CITY** Pursuant to advertisement in The News Press, issue of May 9, 2008, Affidavit of Publication on file, a public hearing was held at this time on amending the Bicycle and Pedestrian Advisory Board to provide members may be a resident, work, own property, or own a business in the City. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title for the second reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3467

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 2 ADMINISTRATION, ARTICLE III, BOARDS, COMMITTEES, COMMISSIONS, DIVISION 3 BICYCLE AND PEDESTRIAN ADVISORY BOARD, SECTION 2-111 CREATION; TERMS OF MEMBERS, BY PROVIDING THE BOARD SHALL BE COMPRISED OF MEMBERS REFLECTING KNOWLEDGE IN THE AREA OF BICYCLE AND PEDESTRIAN PATTERNS AND BE RESIDENTS, WORK, OWN PROPERTY, OR OWN A BUSINESS IN THE CITY; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

There being no one present to be heard, it was moved by Councilman Flanders and seconded by Councilman Wright to adopt the ordinance. After due consideration, a roll call vote was taken as follows: Councilman Wright - Aye, Councilman Streets - Aye, Councilman Simms - Aye, Councilman Flanders - Aye, Councilman Leonardo - Aye, and Mayor Humphrey - Aye. Motion was unanimously carried. The ordinance was adopted at 6:54 o'clock p.m.

**NO. 42 TEMPORARY INJUNCTION TO DELAY CONSTRUCTION OF THE C & D TRANSFER STATION BY WASTE MANAGEMENT, INC.** Councilman Leonardo stated that a hearing was held before the Lee County Hearing Examiner regarding the special exemption request of Waste Management, Inc. to create a transfer station at the Lee County Landfill located at 10500 Buckingham Road. Councilman Leonardo stated that Lee County Board of County Commissioners denied Waste Management, Inc. an extension of the permit for operation as a landfill. Councilman Leonardo stated that residents of Pelican Preserve, Stoneybrook, and Gateway believed the matter finished. Councilman Leonardo stated that Waste Management, Inc. decided to do a transfer station at the landfill and appeared before the Hearing Examiner who ruled that the special exemption request be granted. Councilman Leonardo stated that due process was not accorded to the residents. Councilman Leonardo stated that during the public hearing, Paul Fish referred to the transfer station as part of the landfill and the attorney for Waste Management, Inc. objected to the use of the word landfill which was upheld by the Hearing Examiner. Councilman Leonardo stated that

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residents concluded that the decision had already been made prior to the hearing regarding the special exemption. Councilman Leonardo stated that the landfill where the transfer station was to be located was surrounded on three sides by Ward 6 with 14,100 permitted homes or approximately 35,000 City residents around the site of the transfer station. Councilman Leonardo stated that there was approximately 4,100,000 square feet of commercial space permitted or constructed. Councilman Leonardo stated that there was erroneous testimony presented at the hearing. Councilman Leonardo stated that testimony provided that the traffic utilizing State Road 82 had diminished in 2005, 2006, and 2007. Councilman Leonardo stated that the traffic had diminished because the landfill was not being used as much as before because there was no hurricane debris and the housing market declined. Councilman Leonardo stated that testimony by the attorney for the applicant provided that there would be a significant reduction in traffic into the landfill if the transfer station was approved. Councilman Leonardo stated that the construction of transfer station cannot begin until the landfill was completely closed which is scheduled for late 2008. Councilman Leonardo stated that closure of the landfill would result in no trucks entering and exiting and zero cannot be reduced by fifty (50) percent. Councilman Leonardo stated that the Lee County Code provided that not more than sixty-six (66) decibels of noise could be created within 300 feet of a residential area. Councilman Leonardo stated that the noise created by trucks going into and out of the landfill, as measured by a resident of Pelican Preserve which was a sound expert, created 85 to 95 decibels. Councilman Leonardo stated that the Hearing Examiner ruled narrowly and only on the 5.3 acres involved and as such could only rule on the portion of the road from State Road 82 into the landfill area within the 5.3 acres. Councilman Leonardo stated that the trucks entering the area had trash to be sorted and sent elsewhere had to travel the road from State Road 82. Councilman Leonardo stated that the residents of Lee County and the City were not treated fairly. Councilman Leonardo stated that the City Attorney had talked with the Lee County Attorney who did not want to appeal because they did not think they had standing. Councilman Leonardo stated that the City did not have standing due to the matter being a Lee County issue. Councilman Leonardo stated that City residents would be negatively impacted by the decision of the Hearing Examiner. Councilman Leonardo stated that Waste Management Inc. gave a tonnage number that was 1/6<sup>th</sup> of what could be handled on the 5.3 acre location of the transfer station. Councilman Leonardo stated that there would be an increase in traffic and more tonnage handled per day in the long term planning of Waste Management, Inc. Mayor Humphrey stated that the City should seek any legal remedies as it pertains to the transfer station due to the adverse affect on City residents. Mayor Humphrey stated that the individual who owned 11,000 acres of the property that included Gateway, at the request of Lee County, provided the property for the landfill with specific conditions and promises by Lee County that it would closed because the area would ultimately be developed. Mayor Humphrey stated that continuing to use the property as a landfill was a detriment to the residents and City because the values of the land in the area would be in question. Councilman Flanders stated that Lee County indicated that the mountain of waste was a berm that when the landfill closed it would act as a buffer to sound and noise to Gateway, Pelican Preserve and other developments to the south of the landfill and there would not be much noise to the residential neighborhoods. Councilman Leonardo stated that testimony from a Pelican Preserve resident with a doctorate in physics specializing in sound waves indicated that sound would travel up and over a wall. Councilman Leonardo stated that the residents of Pelican Preserve and the neighborhoods close to Colonial Boulevard heard the noise more than the residents of Stoneybrook and Gateway. Councilman Leonardo stated that a resident advised of noises emanating from the landfill during the night and Waste Management, Inc. claimed it was an auto-recycling business who denied

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responsibility. Councilman Leonardo stated that there was a fire at the landfill and the flames could be seen from the highest point of Pelican Preserve over the height of the landfill. Councilman Leonardo stated that when the bio-diesel plant was proposed concerns were raised of the possibility of a fire at the landfill which could spread to the bio-diesel plant which was flammable and subject to spontaneous combustion. Councilman Leonardo stated that Commissioner Ray Judah rebutted that fires did not take place in landfills. Councilman Leonardo stated that residents were given justifications continually for reasons to continue the landfill operations. Councilman Leonardo stated that the zoning of the area twenty-five (25) years ago was not appropriate now and could be changed. Councilman Leonardo stated that there was opposition to the continuation of any activity in the landfill. Councilman Leonardo stated that the transfer stations at Alico Road and the Lee-Hendry Landfill could be utilized which would not affect residential areas. Councilman Leonardo stated that the decision regarding the transfer station should not have been heard by a Hearing Examiner whose role was to hear cases between individual entities. Councilman Leonardo stated that the transfer station was a political issue. Councilman Leonardo stated that the Hearing Examiner was used because of the opposition of residents. Councilman Streets stated that the cost of fuel would be transferred to the residents if the transfer station was located at the Lee-Hendry landfill. Grant W. Alley, City Attorney, stated that the legal counsel for Gateway Community Services District issued a legal memorandum that Gateway Community Services District did not have legal standing and it was unlikely that the City had legal standing. Attorney Alley stated that the Lee County Attorney advised the Lee County Board of County Commissioners that it would be a legal nullity for Lee County to sue themselves through the Hearing Examiner. Attorney Alley stated that the a legal case was discovered where the Board of County Commissioners of Sarasota County sued the Board of Zoning Appeal of Sarasota County in June 2000 where the county had standing to appeal a decision that adversely impact the citizens of the county. Attorney Alley stated that the City proposed that Lee County consider an appeal of an adverse ruling by the Hearing Examiner at the joint meeting with the Lee County Board of County Commissioners on April 10, 2007. Attorney Alley stated that it was the opinion of the City that Lee County had legal standing. Attorney Alley stated that the City could challenge a develop order through a Writ of Certiorari which was an appellate standard and more difficult than a new trial. Attorney Alley stated that under Florida Statute, Chapter 163 a de novo trial could be held if there was standing, new evidence could be presented, have the judge act as the finder of fact, and the judge can make a decision different than the Hearing Examiner. Attorney Alley stated that Florida Statute, Chapter 163 provided if a local government elected or adopted an ordinance establishing the minimum requirements of the statute and the sole method was identified, it was through a Writ of Certiorari that the order could be challenged. Attorney Alley stated that the City could only use the Writ of Certiorari in Circuit Court and there was thirty (30) days to file which would end on June 4, 2008. Attorney Alley stated that there were three (3) standards for a Writ of Certiorari and would be more difficult for the City to win. Attorney Alley stated that the de novo hearing was an appellate standard similar to a quasi judicial capacity determining if due process was afforded to the parties. Attorney Alley stated that the second standard was whether the right law was applied which in this case was the Lee Plan. Attorney Alley stated that the third standard was there substantial and competent evidence. Attorney Alley stated that the judge must consider whether the Hearing Examiner had substantial and competent evidence to make the determination. Attorney Alley stated that if there was substantial and competent evidence the appellate court was to affirm the decision of the Hearing Examiner. Attorney Alley stated that information had been compiled to start the appeal process. Attorney Alley stated that the Community Development Department and the City Engineer on May 15,

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2008, were requested to review the issues and the impacts of the landfill and transfer station on the residents. Attorney Alley stated that if standing can be established, the City needed to show that the approval was not consistent with Lee County Comprehensive Plan. Attorney Alley stated that the future land use, zoning, and policies of Lee County would be reviewed. Attorney Alley stated that Lee County personnel recommended approval of the application by Waste Management, Inc. with four conditions and the most important was the hours of operation for the transfer station. Attorney Alley stated that according to the Lee County Future Land Use Map the zoning was Industrial, the existing zoning and land uses north I-G, a 270 acre vacant parcel owned by Gulf Disposal, industrial development, east I-G, a parking lot for Gulf Disposal, industrial development, south AG-2 and IG, a 160 acre parcel developed with Gulf Disposal office building, industrial development, west I-G, and an 18.5 acre parcel developed with an auto salvage yard, industrial development. Attorney stated that the City would be required to show inconsistency with the Lee County Comprehensive Plan to be successful. Attorney Alley stated that if there were substantial and competent evidence based on all the testimony at the hearing, including the written documentation from Lee County personnel to support the decision of the Hearing Examiner it did not matter whether the Hearing Examiner was incorrect, the issue was whether the evidence was there. Mayor Humphrey stated that the City Attorney should review the issue and if it was meritorious to appeal the City should file an appeal. Mayor Humphrey stated that Lee County should be requested to not issue the permit to the transfer station until the transfer station was resolved through the Courts. Councilman Leonardo stated that when Waste Management, Inc. brought the special exemption to the Hearing Examiner it was presented as a public utility and a transfer station was not a public utility. Attorney Alley stated that the time for filing an appeal or temporary injunction expired on June 4, 2008, and may require a bond to be posted. Councilman Wright stated that the area of the transfer station had been zoned by Lee County as Industrial and people chose to build next to an industrial zoned area. Councilman Leonardo stated that there were promises made in 1992 that the zoning would be changed and the landfill closed. Mayor Humphrey stated that the sales of houses to residents were made with those promises. Attorney Alley stated that Florida Statutes provides for the intergovernmental dispute resolution which required a process where the two (2) governing bodies meet prior to Court for mediation designed to ensure a meeting before two (2) government entities appear in Court. It was moved by Councilman Leonardo, seconded by Councilman Flanders and unanimously carried for Attorney Alley to review the issues, report to City Council, and be ready to file in time if approved by City Council.

**NO. 42B VIOLENT CRIME IN EAST FORT MYERS** Councilman Streets stated that there were issues of violence and crime in the City, Lee County, and the nation. Councilman Streets stated that violence affected everyone. Councilman Streets stated that the pride and treasure of the nation was the youth. Councilman Streets stated that any nation that neglected teaching and upbringing of youth was a nation in decline. Councilman Streets stated that as a nation people had lost control of children. Councilman Streets stated that the nation prided itself on being one of the strongest and most progressive countries in the world, but children were killing each other in the streets. Councilman Streets stated that the solution had been to build additional jails to incarcerate criminals. Councilman Streets stated that children involved with drugs and misdirected violence were responding to the self-hatred instilled in them. Councilman Streets stated that people who have no self-respect have no problem disrespecting others, carrying guns, cursing and disrespecting the elderly. Councilman Streets stated that there was a time when the home, community, school, and the church worked together which was not happening now. Councilman Streets stated that it was not clear in many households who was in charge. Councilman

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Streets stated that in some cases the children were raising the parents instead of parents raising the children. Councilman Streets stated that children were not taught values or how to honor elders. Councilman Streets stated that more needed to be done with children. Councilman Streets stated that the youth sub-culture developed because adults in the community did not recognize that help was needed. Councilman Streets stated that parents and the community needed to do their job. Councilman Streets stated that the problems would continue if the men and community were not inspired to take ownership and responsibility of a community. It was moved by Councilman Wright, seconded by Councilman Streets and unanimously carried that City personnel develop a resolution to create a joint task force with Lee County.

Councilman Wright left the meeting at 7:48 o'clock p.m.

**NO. 42C BUSINESS FRIENDLY SERVICE** Councilman Flanders stated that there were concerns about the processes and procedures for permitting and approval of projects. Councilman Flanders stated that a meeting was held with William P. Mitchell, City Manager, and Bob Gardner, Director, Community Development Department, to discuss how the permitting process could be streamlined in the Community Development Department. Councilman Flanders stated that there had been time for Mr. Mitchell and Mr. Gardner to become familiar with the process and City personnel should consult with Mr. Ford, Mr. Jones, and Michael Wrightman, Lee Building Industry, to determine if the permitting process could be made efficient and business friendly at the Community Development Department. Councilman Flanders stated that the public was interested in having input regarding the permitting process. Councilman Flanders stated that a fence permit was treated as a development order or planned unit development because it had to be reviewed by every department. Councilman Flanders stated that there may be a way to eliminate some of the procedures for some of the smaller projects. Councilman Streets stated that during a neighborhood meeting, a discussion ensued and people attempting to do business were discouraged with the permitting process. Councilman Streets stated that the City should be user friendly without violating rights and deter projects. Councilman Streets stated that the City should encourage people starting new businesses to create jobs. Councilman Streets stated that entrepreneurs had spent money without achieving results and would rather relocate. Councilman Streets stated that the City needed to be sensitive to the needs of jobs and be forthright in what could be done. Councilman Streets stated that a complete brochure of what was required during the permitting process was needed so that a business owner would be informed before starting if the requirements could be met. Councilman Leonardo stated that the City could provide an Ombudsman to assist people through the process with the procedures and requirements. Councilman Flanders stated that the public needed an answer that would not change. Councilman Flanders stated that when an applicant received an answer and review, the applicant should be confident that was the position of the City. Councilman Flanders stated that the City should work on being factual and straightforward with what applicants need. Councilman Flanders stated that there should be one plan review of documents and items should be not be added later. Councilman Streets stated that there had been discussions of a blanket complaint form for the City. Councilman Leonardo stated that a brochure listing the requirements should be developed. Councilman Simms stated that complaints were received of being given information piecemeal and having to wait numerous times. Councilman Flanders stated that approval must be received from the Historic Preservation Commission to build in an historic district. Councilman Flanders stated that there should be a timeline for permitting a building in an historic district. Councilman Flanders stated that the procedure should be consolidated to assist people in understanding what had to be done. Mayor Humphrey stated that the reason for the reviews was to

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protect people who live in the area and the involvement needed to be consistent. Mayor Humphrey stated that the City did not want to be placed in a position that to expedite permits problems were caused later. Mr. Mitchell stated that the main issues that contributed to delay and perception of inefficiency would be defined. Mayor Humphrey stated that the sixty (60) sets of plans required for the City project Harlem Lakes Park, would be an example to be reviewed. No action was taken.

### **NO. 42D CREATE PROCESS FOR OUTSIDE VENDORS TO PROVIDE DOCUMENT THAT WORKERS IN THEIR EMPLOY, OR WORKERS EMPLOYED BY THEIR SUB-CONTRACTORS WERE ABLE TO LEGALLY WORK IN THE UNITED STATES**

Councilman Leonardo stated that there were 25 undocumented aliens arrested who were doing painting at the Lee County Jail on May 15, 2008. Councilman Leonardo stated that the Immigration and Naturalization Services enforced the immigration laws but the City should have requirements in contracts that the contractors would only employ citizens or non-citizens with work permits allowing them to work. Councilman Leonardo stated that illegal aliens posed security and crime issues. Councilman Leonardo stated that the crime was not necessarily increased because of undocumented aliens but a lot of undocumented aliens were the victims of unreported crimes. Councilman Leonardo stated that the unemployment rate had doubled and had tripled or quadrupled within the construction industry. Councilman Leonardo stated that the choice of jobs should be given to American citizens. Councilman Leonardo stated that taxes and social services were affected. Councilman Leonardo stated that many of the people who were in the United States illegally were abused, their children were abused, and they lived in squalid conditions which was a moral issue. Councilman Leonardo stated that the City should suggest that all the business contracted with the City employ only American citizens or people allowed to work in the United States. Councilman Leonardo stated that the City enforced traffic laws which were small compared to enforcing laws that affected the security of the City, Lee County, the State, and the United States. Mayor Humphrey stated that a lot of people wanted the City to take action but it was a jurisdictional matter. Mayor Humphrey stated that the City could not take an official stand. Mr. Mitchell stated that there was a requirement that a vendor had the responsibility to ensure that employees were legally allowed to work. No action was taken.

### **NO. 43 PERMISSION TO ADVERTISE: FIRST READING - ORDINANCE NO. 3469 AMENDING ORDINANCE NO. 3261, PLANNED UNIT DEVELOPMENT FOR HOTEL MONACO AS REQUESTED BY HFAH-MONACO, LLC, OWNER, AND ABANDON ORDINANCE NO. 3463**

Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title for the first reading an ordinance as hereinafter set out entitled:

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ORDINANCE NO. 3469

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING ORDINANCE NO. 3261 APPROVING A PLANNED UNIT DEVELOPMENT FOR THE HOTEL MONACO LOCATED AT 2543 FIRST STREET, NORTH OF FIRST STREET, SOUTH OF THE CALOOSAHATCHEE RIVER, AND WEST OF THE EDISON BRIDGE NORTHBOUND IN SECTION 13, TOWNSHIP 44 SOUTH, RANGE 24 EAST, FORT MYERS, LEE COUNTY, FLORIDA; BY EXTENDING THE TIMEFRAME TO COMMENCE CONSTRUCTION; BY CLARIFYING THE TRAFFIC MITIGATION FEE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Humphrey stated that the provision in the ordinance that required construction permits must be applied for within 12 month which did not seem consistent with the other items requested. It was moved by Councilman Streets, seconded by Councilman Flanders and unanimously carried to advertise for a public hearing.

**NO. 44 PERMISSION TO ADVERTISE: ORDINANCE AMENDING CITY CODE, TAXATION BY RENAMING AND CHANGING REFERENCES THEREIN FROM OCCUPATIONAL LICENSE TAX TO LOCAL BUSINESS TAX AND AMENDING APPROVAL REQUIREMENTS** Removed by William P. Mitchell, City Manager, on May 14, 2008.

**NO. 45 PERMISSION TO ADVERTISE: FIRST READING – ORDINANCE NO. 3470 AMENDING THE CITY OF FORT MYERS FIREFIGHTERS' RETIREMENT SYSTEM USING FUNDING RECEIVED FROM THE STATE INSURANCE FUND** Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title for the first reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3470

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 62, PENSIONS, RETIREMENT AND OTHER EMPLOYEE BENEFITS, ARTICLE IV, CITY OF FORT MYERS FIREFIGHTERS' RETIREMENT SYSTEM; AMENDING SECTION 62-136, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 62-138, DISABILITY; AMENDING SECTION 62-149, EXEMPTION FROM EXECUTION, NONASSIGNABILITY ETC.; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.

It was moved by Councilman Leonardo, seconded by Councilman Simms and unanimously carried to advertise for a public hearing.

**NO. 46 PERMISSION TO ADVERTISE: FIRST READING – ORDINANCE NO. 3471 CLARIFYING THE HOURS OF SALE OF ALCHOLIC BEVERAGES** Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title for the first reading an ordinance as hereinafter set out entitled:

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ORDINANCE NO. 3471

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 6 ALCOHOLIC BEVERAGES, ARTICLE I. IN GENERAL, SECTION 6-3 HOURS DURING WHICH SALE OR CONSUMPTION AND/OR PATRONAGE PERMITTED; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

It was moved by Councilman Simms, seconded by Councilman Streets and unanimously carried to advertise for a public hearing.

**NO. 46A PERMISSION TO ADVERTISE: FIRST READING – ORDINANCE NO. 3472 AMENDING THE LAND DEVELOPMENT CODE, CHAPTER 98 ADMINISTRATION** Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title for the first reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3472

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, SUB-PART B, LAND DEVELOPMENT CODE; CHAPTER 98 ADMINISTRATION, ARTICLE 1. IN GENERAL, SECTION 98.1.8 RESPONSIBILITY FOR ENFORCEMENT AND INTERPRETATION; ARTICLE 3. PROCEDURES, SECTION 98.3.1 COMMON REVIEW PROCEDURES, SUBSECTION G PUBLIC HEARING APPLICATIONS; SECTION 98.3.4 ADMINISTRATIVE DEVIATIONS, SUBSECTION A. AUTHORIZED AND SUBSECTION B. APPROVAL OF ADMINISTRATIVE DEVIATIONS TO CHAPTER 118; SECTION 98.3.5 VARIANCES, SUBSECTION A. APPLICATION AND CRITERIA AND CREATING SUBSECTION H. NON-HARDSHIP VARIANCE; AMENDING SECTION 98.3.15 DR. MARTIN LUTHER KING JR. BOULEVARD INTERIM DEVELOPMENT APPROVAL PROCESS, SUBSECTION A.; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

It was moved by Councilman Simms, seconded by Councilman Streets and unanimously carried to advertise for a public hearing and acknowledge extending the Dr. Martin Luther King Jr. Boulevard Interim Development Approval Process until the matter can be heard at a public hearing.

**NO. 47 PERMISSION TO ADVERTISE: ACCEPT PROPOSAL FROM JOSEPH DESIMONE FOR DISPOSITION OF REAL PROPERTY IN A COMMUNITY REDEVELOPMENT AREA AT 2978 DR. MARTIN LUTHER KING JR. BOULEVARD AND PERMISSION TO ADVERTISE NOTICE OF DISPOSITION OF REAL PROPERTY IN A COMMUNITY REDEVELOPMENT AREA FOR A PUBLIC HEARING, PURSUANT TO FLORIDA STATUTE 163.380 AND CITY CODE, SECTION 2-39** Pursuant to advertisement in The News Press, issue of March 12, 2008, Affidavit of Publication on file, a proposal was received from Joseph DeSimone for the Disposition of Real Property in a community redevelopment area described as follows:

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Lots 9 and 10, Block 3, in that certain subdivision known as Lincoln Park to the City of Fort Myers, as per map or plat thereof in Plat Book 3, at Page 43 of the Official Records of Lee County, Florida, less the right-of-way as recorded in Plat Book 2969, Page 2472 of the Official Records of Lee County, Florida.

It was moved by Councilman Simms, seconded by Councilman Streets and unanimously carried to advertise for a public hearing.

### **NO. 48 PERMISSION TO ADVERTISE: INVITATION FOR PROPOSALS FOR LEASE OF REAL PROPERTY IN A COMMUNITY REDEVELOPMENT AREA, 1451 MONROE STREET, UNITS A AND B, CITY OF PALMS PARKING GARAGE**

Mayor Humphrey stated that the Invitation for Proposals for Lease of Real Property in a Community Redevelopment Area, 1451 Monroe Street, Units A and B, City of Palms Parking Garage, would be advertised pursuant to Florida Statute 163.380. It was moved by Councilman Flanders, seconded by Councilman Simms and unanimously carried to advertise for proposals for lease of property located at 1451 Monroe Street, Units A and B, City of Palms Parking Garage, located in a Community Redevelopment Area, pursuant to Florida Statute 163.380.

### **NO. 49 INVITATION FOR PROPOSALS FOR DISPOSITION OF REAL PROPERTY IN A COMMUNITY REDEVELOPMENT AREA FOR A 26.78 ACRE CONSERVATION EASEMENT IN EASTWOOD VILLAGE, TO RETAIN LAND OR WATER AREAS AS SUITABLE HABITAT FOR FISH, PLANTS, OR WILDLIFE, PURSUANT TO FLORIDA STATUTE 163.380**

Removed by William P. Mitchell, City Manager, on May 14, 2008.

### **NO. 49A PERMISSION TO ADVERTISE: INVITATION FOR PROPOSALS FOR LEASE OF REAL PROPERTY IN A COMMUNITY REDEVELOPMENT AREA FOR LANGFORD-KINGSTON HOME, 2500 FIRST STREET**

Mayor Humphrey stated that the Invitation for Proposals for Lease of Real Property in a Community Redevelopment Area for Langford-Kingston Home, 2500 First Street, for Restoration, Utilization and Maintenance of the structure and landscaping, would be advertised pursuant to Florida Statute 163.380. It was moved by Councilman Leonardo and seconded by Councilman Flanders to advertise Invitation for Proposals of Lease of Real Property in a Community Redevelopment Area for Langford-Kingston Home, 2500 First Street, for restoration, utilization and maintenance of the structure and landscaping, pursuant to Florida Statute 163.380. Councilman Flanders stated that the Request for Interest provided for full access to the Fort Myers Women's Club for the use of Holiday House from November 1 through January 1 as required. Councilman Flanders stated that the word full should be removed as a not-for-profit would be completing a historic renovation and there would be a portion of the property that could not be accessed because of construction. Councilman Flanders stated that the not-for-profit group might have an office or a portion of the building occupied and full access to the building was aggressive when a tenant was doing the work. Mayor Humphrey stated that reference to restoration within four (4) years and should be changed to five (5) or six (6) years. Mayor Humphrey stated that the Request for Interest provided that the restoration of the structure was within four years of signing the lease agreement should be changed to five or six years because of the fund raising to be done by the non-profit. Mayor Humphrey stated that the Request for Interest provided that the lessee would be responsible for the addition to complete security and fire alarm system satisfactory to the City should be considered as a City responsibility. Mayor Humphrey stated that the City had an agreement with the Ambassador Riverfront Hotel, 2500 Edwards Drive, to provide parking for the Burroughs Home and City personnel should propose an

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agreement when function are held at the historic homes the Ambassador Riverfront Hotel would provide parking at a reduced price. It was moved by Councilman Leonardo, seconded by Councilman Flanders and unanimously carried to advertise the Invitation for Proposals of Lease of Real Property in a Community Redevelopment Area for the Langford-Kingston Home, 2500 First Street, for restoration, utilization and maintenance of the structure and landscaping, pursuant to Florida Statute 163.380.

### **NO. 50 RESOLUTION NO. 2008-18 ESTABLISHING A HOUSING FORECLOSURE PREVENTION AND ASSISTANCE PROGRAM**

William P. Mitchell, City Manager, introduced and caused to be read by Grant W. Alley, City Attorney, by its title a resolution as hereinafter set out entitled:

#### RESOLUTION NO. 2008-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, ESTABLISHING A HOME FORECLOSURE PREVENTION AND ASSISTANCE PROGRAM FOR THE CITY OF FORT MYERS FLORIDA, AND PROVIDING FOR AN EFFECTIVE DATE.

It was moved by Councilman Leonardo and seconded by Councilman Streets to approve the resolution. After due consideration, a roll call vote was taken as follows: Councilman Streets - Aye, Councilman Simms - Aye, Councilman Flanders - Aye, Councilman Leonardo - Aye, and Mayor Humphrey - Aye. Motion was unanimously carried. The resolution was adopted at 8:25 o'clock p.m.

### **NO. 51 MEMORANDUM OF UNDERSTANDING WITH THE HOUSING AUTHORITY OF THE CITY OF FORT MYERS AND SUBMITTAL OF APPLICATION FOR SECTION 108 GUARANTEE LOAN TO THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

William P. Mitchell, City Manager, stated that the Memorandum of Understanding with the Housing Authority of the City of Fort Myers and submittal of application for Section 108 Guarantee Loan in the amount of \$3,000,000.00 over 20 years, to the Federal Department of Housing and Urban Development for the Community Development Block Grant Program was to fund the Marshe Pointe Improvement Plan. It was moved by Councilman Streets, seconded by Councilman Simms and unanimously carried to approve the Memorandum of Understanding with the Housing Authority of the City of Fort Myers and submittal of application for Section 108 Guarantee Loan in the amount of \$3,000,000.00 over 20 years, to the Federal Department of Housing and Urban Development for the Community Development Block Grant Program to fund the Marshe Pointe Improvement Plan.

### **NO. 52 STEP UP TO WORK FACILITATING 20 YOUTHS AS PART OF THE SUMMER YOUTH EMPLOYMENT**

William P. Mitchell, City Manager, stated that Step Up To Work facilitated approximately 20 youths 14 and 15 years of age as part of the Summer Youth Employment Program from June 9, 2008, through August 15, 2008. Mr. Mitchell stated that City Council had indicated an interest in developing a summer youth program that would provide opportunities for young people to work in City funded jobs during the summer. Mr. Mitchell stated that private businesses were encouraged to hire youths during the summer. It was moved by Councilman Streets and seconded by Councilman Streets to approve the Summer Youth Employment Program scheduled for June 9, 2008, through August 15, 2008. Councilman Streets stated that program demonstrated that the City Council was doing things that needed to be done for the community and the Summer Youth Employment program would be proven as a crime prevention

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program. Councilman Streets stated that installing work ethic and professionalism in the youth would be money well spent. Councilman Streets stated that ten (10) students would take golf lessons as part of the program. Councilman Streets stated that age 14 was a good age to start work ethics as youth 16 years and up usually secured work positions but they were not excluded. It was moved by Councilman Streets, seconded by Councilman Streets and unanimously carried to approve the Summer Youth Employment Program scheduled for June 9, 2008, through August 15, 2008.

**NO. 45 PERMISSION TO ADVERTISE: FIRST READING – ORDINANCE NO. 3470 AMENDING THE CITY OF FORT MYERS FIREFIGHTERS' RETIREMENT SYSTEM USING FUNDING RECEIVED FROM THE STATE INSURANCE FUND** Nancy Heberle, Deputy City Clerk, stated that Grant W. Alley, City Attorney, was provided with the incorrect title to Ordinance No. 3470 and the correct title should be read. Mayor Humphrey introduced and caused to be read by Grant W. Alley, City Attorney, by its title for the first reading an ordinance as hereinafter set out entitled:

ORDINANCE NO. 3470

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 62, PENSIONS, RETIREMENT AND OTHER EMPLOYEE BENEFITS, ARTICLE IV, CITY OF FORT MYERS FIREFIGHTERS' RETIREMENT SYSTEM; SECTION 62-136, BENEFIT AMOUNTS AND ELIGIBILITY; SECTION 62-138, DISABILITY; AND SECTION 62-149, EXEMPTION FROM EXECUTION, NONASSIGNABILITY ETC.; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

It was moved by Councilman Leonardo, seconded by Councilman Simms and unanimously carried to advertise for a public hearing.

There being no further business to come before the meeting, it was moved by Councilman Leonardo, seconded by Councilman Streets and unanimously carried to adjourn the meeting at 8:32 o'clock p.m.

ATTEST:

Nancy Heberle  
Deputy City Clerk