

CITY COUNCIL OF EDGEWATER  
REGULAR MEETING  
APRIL 21, 2008  
7:00 P.M.  
COMMUNITY CENTER

MINUTES

1. CALL TO ORDER

Mayor Thomas called the Regular Meeting to order at 7:00 p.m. in the Community Center.

ROLL CALL

Mayor Michael Thomas	Present
Councilwoman Debra Rogers	Present
Councilwoman Gigi Bennington	Present
Councilwoman Harriet Rhodes	Present
Councilman Ted Cooper	Present
Acting City Manager Tracey Barlow	Present
City Clerk Bonnie Wenzel	Present
City Attorney Carolyn Ansay	Present

INVOCATION, PLEDGE OF ALLEGIANCE

There was a silent invocation and pledge of allegiance to the Flag.

2. APPROVAL OF MINUTES

A. Regular Meeting of January 7, 2008

Councilwoman Bennington moved to approve the January 7, 2008 minutes, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

3. PRESENTATIONS/PROCLAMATIONS/PLAQUES/CERTIFICATES/DONATIONS

There were no Presentations at this time.

4. CITIZEN COMMENTS

The following citizen spoke:

Nick Hammer, 197 Cloveridge Court, asked for an update on the sidewalks in Meadow Lake Subdivision. Acting City Manager Barlow stated they recently finalized a conversation with the City Attorney and it appears the sidewalks fall within the right of way of the City of Edgewater so it will be the City's responsibility. They also determined it appears the damage is created by trees that were planted in a very narrow planting strip. He is working with Brenda and Jack to get a resolution that once they repair the sidewalks they may have to remove the trees so they don't have continued damage. In an effort to repopulate that area with trees, they want to take money out of the tree fund and give a rebate to some of the residents and encourage them to plant trees in their front yards, in their front setback.

Mr. Hammer asked if there was a timing on this. Acting City Manager Barlow hoped to have something put together this week. He is going to get together with staff and put together a plan and determine how far from the sidewalk those trees have to be planted and how many have to come up. He estimated 30 to 38 trees.

Mr. Hammer commented on having seven or eight different sites in Meadow Lake that are within either an inch up to five inches of sidewalk erosion. He wasn't sure how far they were planning to go. Acting City Manager Barlow commented on the damage to the sidewalk being from the root base of the trees being so close to the sidewalk. He also informed him the sidewalk was lifting and that it wasn't eroding.

## **5. CITY COUNCIL REPORTS**

Councilwoman Rogers had nothing at this time.

Councilwoman Bennington complimented the Department Heads on their quarterly reports. They were the best she has seen since she has served on a Council. She thanked them for a job well done.

Councilwoman Rhodes agreed with Councilwoman Bennington.

Councilman Cooper read his report into the record.  
(Attached)

Councilman Cooper asked if they should have a special meeting between Council and submit an outline of reviewed areas they would like to see looked at by the Charter Review or if they should leave it to them and wait until they bring back something.

Councilwoman Rhodes stated what they have done in the past is the Charter Review Committee brings forth what they want reviewed and the Council brings forth what they want. The Council can put anything they want under the Charter Review.

Councilwoman Bennington has spoken with a couple of the members individually and they asked her opinion, which she gave as a guideline. She thinks they should wait. Councilman Cooper thought collectively the Council could give an outline that they agreed upon and when they came back with something they really know what is being submitted.

Councilwoman Rhodes stated when they bring it back to the Council, the Council decides which of their suggestions go on the ballot and which don't.

Councilman Cooper asked what if they don't have things the Council wants. Councilwoman Rhodes informed him they add them with Council approval.

Councilwoman Rogers commented on speaking to the person they have appointed some things they want to have looked into.

Councilman Cooper asked about submitting their own ideas to the Charter Review Committee. Councilwoman Rhodes informed Councilman Cooper he needed to submit them to Council. When they bring forth what they want changed, they either approve all of it, part of it or none of it and at that time they submit anything the Council wants and then they approve all of it, party of it or none of it. Councilwoman Bennington stated or send it back to them and ask them to make the changes. She feels they should let them do their job before they start interfering.

Councilman Cooper continued his report by commenting on a communication he received that was not signed. He then read the letter into the record. (Attached) With no signature he feels it has no merit but still may have valid

concerns. He feels these types of letters and these types of things don't do anything but build animosity. If they have honest concerns and complaints, staff & Council would do everything they possibly could to get an answer.

Acting City Manager Barlow stated to date there has not been a contract presented by the Fire Rescue Department and to date there has been no active negotiation between the City Council, City Manager with the Fire Department. They are going through the process of establishing a labor union but they are still finishing the process and there has been no contract presented to date.

Councilwoman Rhodes agreed with Councilman Cooper for the most part on that. However, some people that have complaints against the Police or Fire department might not want to give their name and she could understand that. If their name is out there they may be harassed. She feels whether they give their name or not their concerns should be addressed. She felt the letter Councilman Cooper read was a bunch of garbage. She understands why some things want to be unanimous and she doesn't have a problem in those cases.

Mayor Thomas reported on attending the WAV meeting last Wednesday. They hired a new Executive Director. Their main emphasis right now is education of the public and education of the children in the schools, water conservation and looking into the future of possible desalination plants.

Mayor Thomas then presented an update on Little League. He is very proud of our Little League and the way it is progressing and the Parks and Recreation keeping the fields looking like Yankee Stadium.

Mayor Thomas commented on being very proud of the quarterly reports.

Mayor Thomas commented on being very proud of all the public employees for the help they give him.

Mayor Thomas then reported on a breakfast being done by the Firemen from 7 a.m. to 11 a.m.

Mayor Thomas commented on Cracker Day at the Volusia Fairgrounds being this Saturday from 9 a.m. until 6 p.m.

## 6. CONSENT AGENDA

There were no items on the Consent Agenda to be discussed at this time.

## 7. PUBLIC HEARINGS, ORDINANCES AND RESOLUTIONS

- A. Ordinance No. 2006-O-17, James C. Carder requesting an amendment to the Official Zoning Map to include .24+ acres of land located along the southwest corner of Falcon Avenue and Mariners Gate Court as R-4 (Multi-Family Residential)

City Attorney Ansay read Ord. 2006-O-17 into the record.

Development Services Director Darren Lear made a staff presentation. James C. Carder was available to answer any questions.

Councilwoman Rogers commented on one of her questions way back when having to do with a retention area and Mr. Lear saying it wasn't necessary. In light of the new maps they received when PEC presented information to them, she asked how the new information will impact this property or if it impacts it at all. Mr. Lear informed her once they actually turned in the building permit applications, when they reviewed that, they are trying to get the zoning map consistent at this point.

Mayor Thomas commented on this being next to the clubhouse and Mr. Carder owning the property and he was just letting them use it as a parking lot out of the goodness of his heart. Mr. Lear pointed out he believed there were five spaces that were basically encroaching onto his property. He wasn't sure if they had an official agreement but he was letting the Association utilize those parking spaces. He believed at the advice of his attorney he removed those parking spaces off of his property.

Mayor Thomas opened the public hearing.

The following citizens spoke:

**Richard Turner**, 201 Falcon Avenue, stated he was concerned about them building a duplex but now they are going to build a single family home, which they are all in favor of.

**Gerry Preston**, 213 Falcon Avenue, expressed concern with the traffic if they build another house there. They have so much traffic now coming out of Pelican Cove West and Mariners Gate. The stop sign means nothing.

Mayor Thomas closed the public hearing.

**Councilwoman Rhodes moved to approve Ord. 2006-0-17, second by Councilwoman Bennington.**

**The MOTION CARRIED 5-0.**

B. Resolution No. 2008-R-04, Purchasing Policy - to update the existing policy dated November 16, 1998 in order to comply with Florida Statute 287

City Attorney read Res. 2008-R-04 into the record.

Finance Director John McKinney made a staff presentation by highlighting the key areas in the Purchasing Policy.

Councilman Cooper commented on Page 35 in reference to the Purchasing Cards. There is a little discrepancy on 2 & 3 where it isn't clear regarding the \$1,000 minimum with \$2,500 being the maximum. He stated Mr. Kinney has agreed to clear up the verbiage.

Councilman Cooper commented on Purchasing Card Program Internal Controls. It looks like if they have a problem they turn it back over to the Department Head but they were going to add the language that it falls under the Control within the Personnel Policy and Procedures. He stated Mr. McKinney had no problem putting that in there. Mr. McKinney commented on adding a bullet 3 on page 37 that if there is an issue regarding an employee that the Personnel Policies and Union contracts do prevail in terms of the process by which an employee is dealt with. Acting City Manager Barlow pointed out that it falls under the Personnel Policy today as far as misbehavior.

Councilwoman Bennington felt it was an excellent document that was well overdue.

Acting City Manager Barlow commented on this being one of the tasks assigned to Finance Director McKinney shortly after he arrived in Edgewater. They wanted a very defined policy that gave good direction for any new department director or supervisor. He wanted the expenditure controls in there and to try and extrapolate all the efficiencies they could get out of the program considering they are scaling down personnel as it relates to management. He felt they achieved all three of those goals.

Councilwoman Bennington commended Finance Director McKinney for the large, great overall improvement she has seen since he became our Finance Director.

Councilwoman Rogers commented on how pleased she is with Mr. McKinney and everything he has been doing. With the Purchasing Policy, since it hasn't been updated since 1998, she asked if he was looking in other areas of internal accounting controls. Finance Director McKinney commented on other policies that need to be done as well with regard to warrant issuance, closing of the monthly books, and the annual audit.

Councilwoman Rogers asked about the CAFR and the audit. She asked if he was keeping in touch with the auditors. Finance Director McKinney stated last week we received the final trial balance from the auditors. He was in communication with Richard Myers, who we are doing the audit software with. Come Monday next week they are full steam ahead to finish the CAFR that they are doing in-house for the first time in years. Their deadline is May 30<sup>th</sup>.

Mayor Thomas mentioned bragging about Finance Director McKinney on the radio.

Mayor Thomas closed the public hearing and entertained a motion.

**Councilman Cooper moved to approve Res. 2008-R-04 with the changes they spoke of, second by Councilwoman Rogers.**

**The MOTION CARRIED 5-0.**

## **8. BOARD APPOINTMENTS**

- A. Code Enforcement Board - Councilman Cooper to fulfill the expired term of Glenn Barnhill, who seeks re-appointment

**Councilman Cooper moved to reappoint Glenn Barnhill, second by Councilwoman Rhodes.**

**The MOTION CARRIED 5-0.**

**9. OTHER BUSINESS**

- A. Vicki Phillips Wheeler requesting leniency regarding the penalties and fees for a Utility Lien and a Code Enforcement Lien in the amount of \$5,810.99, incurred for property located at 311 Joyce Street

Acting City Manager Barlow informed Council that Ms. Wheeler was not present but was being represented by a realtor.

Finance Director McKinney made a staff presentation.

There was a brief discussion regarding the three liens against the property.

Councilwoman Rhodes mentioned there being some filing fees and administrative fees being included. Finance Director McKinney pointed out \$20 to satisfy the lien besides the penalties and interest. She spoke of there being a cost to the City for the employee to go to the courthouse to file the lien. Finance Director McKinney informed her they just mail it.

Councilwoman Rhodes commented on the cost associated with all the employees who gather the information. Finance Director McKinney commented on the administrative fee being covered under penalties and interest.

Councilman Cooper asked Finance Director McKinney about the contact he had with the Pastor. Finance Director McKinney informed him he spoke with him today and he spoke with his wife last Wednesday as well. Councilman Cooper asked if in the communication there was any satisfaction offered of any kind or any explanation of why three years have gone by and nobody has contacted the City. Finance Director McKinney informed him it was pretty much left at the circumstances

of Ms. Phillips that the Council would have understanding of her situation and when they called the City Clerk's office they thought their letter alone and that being brought before Council would be enough to persuade the Council to vote to waive the lien. Their issue was it was a 16-hour round trip and with the cost of fuel and an overnight stay, it was decided that even if they had to hire a lawyer for several hundred dollars when you have the amount of liens they do, it was worth an effort to try. That is why they called him this morning saying they asked their realtor to come in and act on their behalf.

Councilman Cooper stated but they had no problem asking the City Council to wipe out \$5,800. Finance Director McKinney informed him no.

Councilman Cooper stated he had a total of about \$1,663.30 without penalties and interest. If they were to make a labor assessment of that, would he say \$2,500 might be fair and reasonable covering the cost and usage and employee time? Finance Director McKinney informed him yes. He then asked Councilman Cooper if he was talking about the Code Enforcement side or the Utility lien side? Councilman Cooper stated he was talking about the whole mess. Finance Director McKinney stated he spoke with Acting Fire Chief Steve Cousins regarding the Code. The one thing he did point out was that they were cited on January 19<sup>th</sup>. When they did a drive by on March 1<sup>st</sup> of 2007 the house was in complete compliance. It could have been in compliance on January 23<sup>rd</sup> but Ms. Phillips did not contact the City. Councilman Cooper stated no communication again. Finance Director McKinney stated Acting Fire Chief Cousins said it is very possible she was in compliance far before the \$50 per day was assessed. He mentioned lack of communication.

Linda DeBorde, NuDay Realty, representing Ms. Phillips, stated she has known Ms. Phillips since she was probably six years old and has always been a responsible citizen. There have been many extenuating circumstances. She would be here but the trauma of everything she has gone through has been more than she could handle. That is why her minister has been working on her behalf. She pleaded with Council to allow her to pay the base so the City doesn't lose the base, if they would eliminate the penalties and interest it would be much appreciated. They have placed her home on the market and had to place it at a pretty low price because of market conditions and it has been sitting

empty for over three years because of circumstances beyond her control. They didn't know how long it would take them to sell it and she does have a job now and she is trying to get her life back together. If they would consider that they would much appreciate it.

Councilman Cooper asked Ms. DeBorde if they had a figure in mind that they believed was the base. Ms. DeBorde informed him approximately \$1,600 based on what she was following along with the Finance Director.

Councilman Cooper commented on there being a continued month-to-month service fee and how they intend to deal with that. Ms. DeBorde informed him she has a job now and she can pay the base. She isn't going to be using it and she can take care of it from this point. Councilman Cooper asked what would be their guarantees of that. Ms. DeBorde stated they didn't have a guarantee they would be here tomorrow so she didn't know.

Councilman Cooper stated it has been three years and lack of communication for the most part offers some concern for them to waive that much of the City's money without some kind of promissory note or something. Ms. Phillips didn't authorize Ms. DeBorde to come forward or for the Real Estate office won't turn around and say they will pick up any additional service fees that accumulate from this point forward. Ms. DeBorde didn't think anybody could do that. They just have to have faith and move forward. They would have a lien on the property. When it closes, the title company is going to check with the City of Edgewater and if she owes two months water bill when it closes, it's paid at closing. Councilman Cooper stated they don't want to keep putting liens on properties. Ms. DeBorde stated the water bill is a lien on the property all the time and they can't close them without checking with the City.

Councilwoman Rogers stated this property has been a situation for us since June 2005. Monthly bills were sent out and monthly bills are received. At the last meeting she asked if the bills came back as not being received, return to sender and Finance Director McKinney informed her no. The lien was actually filed June 2007 on the first utility lien, almost a year ago. Because they are finally stepping up to the plate and doing something about it now they are getting communication. Her other concern is the City has approximately \$250,000 in utility liens filed in

this City and this being approximately .25 of our millage. Here they are dealing with the lack of raises or a lack of a 3% raise increase for our employees. She believed \$250,000 in the City coffers could have helped that. She has a concern because this isn't something that just happened over night. She understood situations but at the same time they have to step up and be responsible and all it took was some communication. She feels the Council and the City employees have done their jobs. She didn't think they needed to move on this. She was curious to find out what the sale price was and the balance on the loan. Ms. DeBorde stated she had it on the market at \$90,000 but didn't have the estoppels information. Councilwoman Rogers asked if there was a first and second mortgage or just a first or no balance on it. Ms. DeBorde didn't have the balances on any of it.

Councilwoman Bennington asked if she has been making her mortgage payments all this time. Ms. DeBorde informed her she has been.

Councilwoman Bennington agreed with Councilwoman Rogers. She appreciated the situation Ms. Phillips is in in asking the Council to consider this. She understood that. Had there been open communication or acknowledgement that she had received the bills but was in a situation that she couldn't pay them at the time she felt it would have helped them deal with it. She is of the opinion that if they have these laws and rules and procedures, if they make exceptions for these hardship cases and bend that is all they are going to be sitting up there doing is hearing these things.

Ms. DeBorde stated she was traumatized when she fled and stayed that way for quite a while. In the last year she has had help from the church and has begun to function in the real world. Councilwoman Bennington stated it is not the government's responsibility to take care of individuals in their hardship situations. They have to look out for the overall taxpayer's and the City's best interest. She didn't feel it was right for Council to waive these liens.

Ms. DeBorde stated they want to do what is right. They aren't asking them to waive any of the base fees.

Councilwoman Bennington stated but she took the time to make her mortgage payment every month. Ms. DeBorde stated they didn't know that for sure.

Councilwoman Rogers stated every citizen in the City pays a utility bill, whether they are there or not there is a minimum charge. She thinks the lien as it is right now should stand. Ms. DeBorde just mentioned she is going to pay the future bills because she is working. What they will then have is this lien that will continue to grow with penalty and interest. She suggested they could say for a period of time they will not charge penalty and interest on what is outstanding right now as long as she pays currently. They can say right now what is past, this is it, we are going to close it off as long as she stays current. If she misses one of the current payments, then what they have in the past is going to come back and they are going to hit her with the accrued penalty and interest. She felt this was fair.

Councilwoman Rhodes asked if she was saying that what she owes right now, freeze it at that. Councilwoman Rogers stated yes as long as she pays currently. If she doesn't pay currently, then the accrued will hit.

Councilman Cooper asked if she makes the payments they are going to wipe out the debt.

Councilwoman Bennington stated what she was saying is they freeze the debt right now. If she makes her monthly utility payments on a regular basis, it doesn't grow anymore. The minute she misses one it accrues back to where they froze it and starts building again.

City Attorney Ansay stated the lien amount is a set amount as it exists right now. If she doesn't continue to pay the base monthly fee they are going to have to do another lien at that time. They can't go back and assess interest and fees and costs on what she hasn't already paid. That is a set lien amount that is already recorded in the public record. It's a set defined sum. When they are talking about interest, they are talking about interest that is typically prior to the time in which the lien is entered into the public records. She thought if there was continued non-compliance on a go forward basis that is going to be dealt with on a separate lien. Certainly the lien that exists remains and if there is indeed any

opportunity to sell the property, she cautioned them that in most places where she works with Code Enforcement, with the real estate market and what it is now, in most cases there is nothing left to satisfy the lien. When they are talking the dollar value that she is talking about it would be most important for the Council to know what is left on the mortgage and any second mortgage. Most of the time there isn't a lot left over for the City to get paid when the sale happens anyway.

Councilwoman Rogers stated the lien as it stands right now, the \$5,810.99 that would only grow if they turned around and filed another lien. She suggested they hold off on doing that. She didn't say change the \$5,810.99. In a sense freeze it. They will not file another lien for the additional accrued penalty and interest as long as they are making payments. If they miss the payments they will file another lien from the last lien they filed to that point in time. City Attorney Ansay stated that is basically the law and there is really no deal they are cutting because that is State law.

Councilwoman Rhodes asked why it took them so long to file the lien. Finance Director McKinney stated they filed one for \$75 on January 2007, another one on July 2007. They filed several times. They filed one on July 17<sup>th</sup> for \$2,527.

Councilwoman Rhodes stated she was trying to be sympathetic to this woman who was in a terrible predicament. She disagreed. She felt government needed to be compassionate in some cases. She didn't feel the taxpayers needed to foot the bill for it. She was trying to get to a number where the taxpayers don't pay but this woman gets somewhat of a break.

Finance Director McKinney stated if she had paid on time, it would be the \$1,663.03. Councilwoman Rhodes stated every time they file a lien it costs money. Finance Director McKinney suggested they add on the \$120 for a total of \$1,863.03 for the filing of the lien and the satisfaction.

Acting City Manager Barlow commented on what has been done in the past as it relates to administrative fees. They have used a ballpark of 25%, which would bring that to a total of \$2,078.79. Councilwoman Rhodes suggested \$2,100. Ms. DeBorde stated if they could see there way clear to

that, they could get a check by overnight. The Minister will see to that.

Councilman Cooper asked if they were proper and legal if they were to basically offer this in satisfaction in lieu of payment within the next five or ten days of the \$2,100 for lien satisfaction at this point but her monthly fees would continue until the property is sold. He asked City Attorney Ansay if that would be okay. City Attorney Ansay informed him if the majority of the Council wanted to waive the existing liens for whatever amount they have the ability to do so. If there are any future issues of non-compliance, that is a whole new ballgame.

Councilman Cooper asked how they would go about wording this in such a way that an offer of satisfaction needs to come out of their department and in their hot little hands so they know it is a bona fide offer. City Attorney Ansay stated the motion would be they would move waiver of the three referenced liens for an amount equal to X on the condition that the amount is paid by whatever date and if done so then staff would be directed to satisfy those three liens. She also added that any future violations remain subject to all the existing rules and regulations as they apply and this is not any waiver of any current or future issues of non-compliance.

Councilman Cooper asked Ms. DeBorde if she was empowered to make an offer of satisfaction. Ms. DeBorde assured him they could get a check in the mail to her tomorrow and she could have it to the City the next day for \$2,100.

**Councilman Cooper made a motion to waive the said liens that are filed in lieu of a one-time certified check payment of \$2,100 to the City of Edgewater and the commencement of all fees, regular monthly service fees from this point forward will still be charged should they receive this by ten days.**

Ms. DeBorde confirmed she could have a check by the end of the week. The Minister has assured her he has that much that he can work with.

**Councilwoman Rhodes seconded the motion.**

Councilwoman Bennington asked why the Council is considering this other than compassion.

Councilman Cooper stated that is basically the only reason they are considering this. His real concern is the City's owed money. By going with the \$2,100, the City is getting their service fee and they are trying to be fair.

Councilwoman Rhodes stated no taxpayer is paying for this.

Councilwoman Bennington stated by doing this if they were considering that now if they do this for her, which she feels they have more than enough proof but they are setting a precedent that anybody can come before them and give them a sob story. Councilwoman Rhodes stated they can do that anyway. Anyone can come before them.

Councilwoman Bennington stated they are setting a precedent saying they will listen to the sob stories and maybe they will consider them depending on how compassionate they feel at the time. Councilman Cooper feels that is what they should do. Councilwoman Bennington feels then they shouldn't have this policy that they file these liens and charge people penalties and interest. She feels they have a policy that they file the lien based on the actual cost the City has lost and not charge penalties and interest so the Council doesn't have to listen to this.

Councilwoman Rogers stated this one is hard. \$3,600 written off. That is hard to swallow. She can't help to think there is something more personal that they aren't getting because something was mentioned that wasn't in the paperwork that was provided.

**The MOTION CARRIED 3-2. Councilwoman Bennington and Councilwoman Rogers voted NO.**

Ms. DeBorde thanked the Council.

Mayor Thomas called a ten-minute recess. The meeting recessed at 8:03 and reconvened at 8:15 p.m.

B. Scott Simmons requesting a waiver of Utility Liens in the amount of \$2,200.29 incurred for property located at 613 N. Ridgewood Avenue

Finance Director McKinney made a staff presentation. He pointed out that something jumped out at him as they prepared this and staff is going to review that as a

commercial property their base fee is \$37.90 currently whereas residential is \$48. He looked at a bunch of properties to see if they were consistent. They are. This one somehow has had a break from stormwater forever.

Finance Director McKinney also commented on a previous statement regarding title companies finding liens and outstanding balances due against properties when they close. He commented on an incident he had today regarding a title company out of Ft. Lauderdale that didn't do the title search. Because of our policies and procedures the City will not allow them to establish utility service without the prior balances being paid. He spoke of people thinking everything was taken care of at the closing and then they come in and find out there is an outstanding bill that has to be satisfied first. These are the cases they are hearing every day.

Councilwoman Bennington feels one of the things they need to do as a City is let all of their utility users know that if they have their services turned off that they are accruing a monthly bill and if it isn't paid on a monthly basis that they will file a lien. She heard a lot of people aren't aware of that, that they have a minimum amount whether they are receiving the service or not. They don't know if they don't pay the bill the City can file a lien against them.

Finance Director McKinney commented on different scenarios he has heard with regard to people not being able to afford their water because they make minimum wage because they lose their job, have to buy groceries and have their mortgage to pay also, people have lost their jobs, their utility bill isn't priority, or they have moved in with family members because their house is being foreclosed on and they are still being assessed \$48 every month. This is reality in today's economy.

Finance Director McKinney commented on what the County does as far as some of their services being collected through the tax bill. They are still getting the money if the homeowner can't pay for it and you also have tax deed sales. People are putting the consumptive portion of bills on a utility bill and the operation portion is still covering the bills. There are a million different ways to do it.

Councilwoman Bennington doesn't want to have more of these come before them and say they didn't know they were going to have a lien if they didn't pay the minimum bill. This is the third one they have heard in the last couple of months where that has been one of the defenses.

Councilwoman Rhodes suggested sending a letter out. Councilwoman Bennington felt if they were doing a brochure that needed to be put in there and made very clear that there is a minimum even though it is turned off.

Acting City Manager Barlow agreed to do an article for the website as well as the City newsletter, which is inserted into every water bill. He assured Council that every week he signs numerous liens placed on properties based on a majority of them utility as well as numerous satisfactions. This is minority compared to the ones that are satisfied.

Councilwoman Rhodes questioned a letter being sent out notifying the customer if they don't pay the bill by a certain date it is going to be turned off. Finance Director McKinney stated it is on the utility bill. Councilwoman Rhodes suggested they add a line to that letter saying that if your water is shut off the bill continues to accrue. Finance Director McKinney informed her unless they put it stagnant on the actual bill form there is only so much space they have on the utility bill. Councilwoman Rhodes was talking about the letter the City sends out when they are telling people the City is going to turn off their water. Acting City Manager Barlow and Finance Director McKinney agreed to do that.

Councilwoman Bennington suggested sending a letter to all of the real estate companies to tell their perspective buyers how the City operates. Finance Director McKinney informed her that was discussed with the RA today. Councilwoman Rogers wasn't sure if they wanted to do that because they want the houses to sell. They have enough to deal with with the property taxes and the homeowners insurance. Acting City Manager Barlow stated especially residential. They don't want to lock it up where the liens exceed the value of the property and they can't turn that property and put someone in there to consume more of the products the City sells such as water, sewer, etc. He again mentioned the hardship cases being minority compared to what we do satisfy with payment every month.

Mayor Tomas pointed out that they had strayed way, way, way away from 9B.

Councilwoman Rogers had a question and it refers to the budget for this year and asked Mayor please.

Councilman Cooper asked if they could follow up with Finance Director McKinney on this topic after they discuss Item 9B. Mayor Thomas informed him yes.

**Councilwoman Rhodes made a motion that they do not waive this lien, second by Councilwoman Rogers.**

Acting City Manager Barlow pointed out that there was someone in the audience representing the property.

**Steve Stone**, 725 Magnolia Avenue, Orlando, stated he was the mortgage holder on this property. He did not receive the bill. He has recently received a deed in lieu of foreclosure on the property. It was as a result of doing a title search that he discovered the liens were placed by the City. He agreed and understood the bill had to be paid although there was no water consumption. He hasn't received a mortgage payment in two years on this property. He has been trying to sell it or lease it and they now have a tenant for the property. He was not aware of it. He understood how the lien law works but he wasn't aware there had been a lien and the bill never came to the mortgage holder although he wasn't suggesting it was required to do so. They did pay the bill under protest because they had a tenant and needed to move a tenant in there. They are requesting that the penalties and interest be waived and they be reimbursed for that and that the City maintain the money that was the correct amount. He wasn't aware this property wasn't subject to stormwater charge. He had no idea. He wouldn't have any way to know that.

Councilwoman Bennington stated apparently they didn't either. Mr. Stone stated he wasn't suggesting he was in the same position as the lady in the first situation but they believe there is a basis here. He commented on the City probably filing hundreds of liens and only a few ever make their way down here. People pay them off because the title company has to pick those up and they have to be paid out of the closing proceeds.

Councilman Cooper questioned this being a rental property from the get go. Mr. Stone stated the property was sold. It was owned by a company called Sundance LLC that went out of business. Mr. Simmons was the owner of Sundance and he has subsequently given them the deed in lieu of foreclosure. Councilwoman Rogers confirmed they were holding the note on the property. Mr. Stone informed her that was correct.

Councilwoman Rogers commented on Mr. Stone receiving the property deed in lieu of foreclosure. She felt they were in a good position on the property equity wise was what she was getting at. Deed in lieu of foreclosure means perhaps they would have acquired the property at maybe below market and now they are asking them to waive penalty and interest on the liens that have been filed.

Mr. Stone informed her that was not an accurate statement. They had a deed in lieu of. They had a choice. They could have filed a foreclosure. He commented on other liens on the property that they can wipe out in a foreclosure. They elected to pay the bills on there because he felt they needed to be paid. He is asking for a leap as far as the penalties and interest in this situation.

Councilman Cooper asked Mr. Stone if they have had the water and utilities, our services provided to them the mortgagor so they don't run into this again. Mr. Stone informed him the water is in the name of the new tenant. This is a landlord-tenant relationship now. It wasn't before. It was an ownership. He was just the mortgage holder.

Councilwoman Rhodes commented on not sending water bills to the tenants. They send them to the owners. Mr. Stone guessed the bill would come to him.

City Attorney Ansay stated the bill would go to the name on the account. If it got to the point where it wasn't being paid and they were doing a lien, by law the lien would have to be noticed to the owner and as the owner now if that were to happen he would receive notice.

Councilwoman Rhodes stated as City policy they do not send bills to tenants. They send them to the owners. Finance Director McKinney commented on this compounding the situation even more. He presented an example of a tenant

being mad at the landlord and leaving the water running for five days straight and the landlord being responsible for it. He stated this is correct. He has already sent the request to Kathy to check on this account based on what they heard during the break.

Councilwoman Rhodes stated if you are an owner of a property and you have a tenant and the tenant doesn't pay the water bill and the tenant leaves why should the taxpayers pay that water bill. Finance Director McKinney informed her the taxpayer wouldn't be, the rate payer would. Councilwoman Rhodes felt if they have somebody that gets mad at the owner and leaves the water running and they send the bills to the tenant and not to the owner, then the users of the water of this City pay for that water. She feels that is not right.

Acting City Manager Barlow stated that is a policy they look to evaluate and bring back to Council probably in a separate work session. That policy in itself is a hot issue in Edgewater and he didn't think they would solve it tonight.

Finance Director McKinney stated the landlords are paying the bill and are finding out they skipped out after 90 days. They are paying for it because they want to re-rent the house. They are complaining but they are paying and satisfying it.

**The MOTION CARRIED 5-0.**

- C. Authorization for the City Manager/City Staff to enter into contract negotiations with Willie Wood Construction Inc., for the construction of a metal building per guidelines and specifications set forth in RFP No. 08-WWC-01

Acting City Manager Barlow made a staff presentation.

Councilwoman Bennington asked what the timeframe was if they went with this tonight. Leisure Services Director Jack Corder informed her of the time frame through the RFP's completion would be around the first part of September. Looking at the review they might be able to move that process up by the permitting process.

Councilman Cooper stated the funds are coming out of the Animal Shelter funds. They were hoping the projection would be around \$162,000. Due to it being higher, he asked if he still had enough money to work the Animal Shelter project that he had to put forward. Mr. Corder informed him when they made the presentation to Council they had an estimate of \$192,000 and \$20,000 for permitting and impact fees. They are in the ballpark. They will with the remaining funds get the shelter built. He thought they could do it and said they would have space for the animals. He will be the Pet Society's volunteer to go out and strong-arm some people on donations.

Acting City Manager Barlow stated the proceeds from the sale of the old building that we are buying out of the bond issue will construct this new one.

Councilwoman Bennington moved to accept the bid. Due to Councilwoman Rhodes having a question, Councilwoman Bennington rescinded her motion.

Councilwoman Rhodes asked what the lifespan was on the building. Mr. Corder informed her he believed it had a thirty-year warranty.

**Councilwoman Bennington moved to accept this proposal and authorize the City to enter into an agreement with Willie Wood Construction, second by Councilman Cooper.**

**The MOTION CARRIED 5-0.**

Councilman Cooper expressed his appreciation for the job going to a local construction company in our area. Mr. Corder informed him all three construction companies that bid on it were all local.

D. Authorization for the City Manager/Mayor to enter into an agreement with REP Services to purchase and install playground equipment at Hawks Park for the amount of \$83,940.92, using CDBG Funds

Leisure Services Director Corder made a staff presentation. He informed Council that REP Services is a representative of Landscape Structures and that the contract is actually with Landscape Structures.

Councilman Cooper asked if this was the equipment he was telling him about that we were getting for a lot less because it was the demo and they gave us like brand new equipment. Mr. Corder commented on this being an innovative system, which is more for fitness than your regular standard playground equipment.

Councilman Cooper thanked him for negotiating that and getting the better equipment.

**Councilwoman Rhodes made a motion to authorize the City Manager or the Mayor to enter into an agreement with Landscape Structures to purchase and install playground equipment at Hawks Park for the amount of \$83,940.92, second by Councilwoman Rogers.**

**The MOTION CARRIED 5-0.**

E. Renewal of Agreement between the City and Volusia County for Fire and Emergency Medical Services

Acting City Manager Barlow made a staff presentation.

Councilman Cooper asked if the payment structure puts a hurting on us at all. Acting City Manager Barlow informed him no, it's very similar to the last payment structure. It's much simpler. He commented on the Closest Unit Response Agreement and this being a requirement of the EMS ordinance in order for the City to continue advanced life support services.

Councilwoman Rhodes asked if Finance Director McKinney could track this to make sure we recoup our costs. Acting City Manager Barlow stated he does that. The previous agreement required the City to staff the rescue truck, which created a lot of overtime. This fiscal year there was no money budgeted for backfill overtime so they have been having to take that truck out of service at times they couldn't afford to put that in and only leave two engines. They will still be able to provide those services. He commented on a spreadsheet he evaluates. He is comfortable with the \$240,000.

**Councilwoman Bennington made a motion to authorize the Mayor to execute the agreement between the City and the County of Volusia for Fire and Emergency Medical Services, second by Councilwoman Rogers.**

The MOTION CARRIED 5-0.

F. Ratification of the Coastal Florida Public Employees Association (PEA) Agreement (General Employees Union Contract)

Acting City Manager Barlow made a staff presentation.

Mayor Thomas stated he understood the vote was 27 to 17. He questioned there being more employees and why they didn't vote. Acting City Manager Barlow informed him he didn't know why they didn't vote but that there are more employees.

Councilman Cooper thanked the General Employees and Tyna Hilton for her help and for understanding the plight they were in and for working with them at this time. It brings forward a more team effort.

Mayor Thomas asked Ms. Hilton if there was a reason all of them didn't vote. Ms. Hilton stated when they have a vote in the City unfortunately they don't have the numbers that come out. People will complain and have their voices but won't come out to vote. There was no real reason. They were all notified. It's been a hard year. She thanked Acting City Manager Barlow for making it easier towards the end. It was very rough at first. She felt the employees understood it is a hard time.

Councilwoman Bennington expressed her appreciation for the employees being understanding. She wished they could do more but right now they just can't.

Councilman Cooper stated the citizens needed to know that the General Employees have stepped up and made the sacrifice again for the City that they live in. It's a combined effort. Ms. Hilton stated the biggest majority of the employees do live in the City so they do understand.

Ms. Hilton, as the Union Rep, thanked the City Council and Acting City Manager Barlow because the negotiations went a lot smoother and she thinks it helped overall.

Mayor Thomas entertained a motion.

Councilwoman Rhodes made a motion to ratify the PEA General Employees Union agreement, second by Councilwoman Bennington.

The MOTION CARRIED 5-0.

G. Declaration of Easement

Acting City Manager Barlow made a staff presentation. They had to add this to the agenda for an access easement on the ParkTowne Boulevard extension. It was recently brought to his attention that the easement or a plat was not recorded to give access to some other adjoining properties. They need to declare an easement and authorize the Mayor execute the declaration of an easement. They will come back to Council at a later date to record the plat.

Acting City Manager Barlow stated they are requesting they authorize the Mayor to execute the Declaration of Easement on ParkTowne Boulevard as indicated in Exhibit A.

Councilwoman Bennington so moved, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

10. OFFICER REPORTS

A. City Clerk

City Clerk Wenzel reported that they started the Charter Review Committee meetings on Friday. They are working very hard to get all of the election changes completed in time to meet the deadline for the Department of Elections with the County. She further commented that Ann McFall and Assistant City Attorney Michael Ciocchetti attended the Charter Review Committee meeting today.

City Clerk Wenzel stated the City is holding a storm drain marking event on Saturday, May 10<sup>th</sup>. They are going to mark storm drains with decals that state "No dumping - This drain drains to the river". She commented on the agencies that are involved to get these programs out to get the citizens involved. Citizens can volunteer to help with the project and will be provided hot dogs and chips afterwards.

Councilwoman Bennington asked where it was going to be. Acting City Manager Barlow informed her they would be in the community Center.

Tyna Hilton commented on using the Community Center. They will be marking U.S. #1 from 10<sup>th</sup> Street. Depending on how many volunteers they have will depend on how far they go. Their goal is to start at U.S. #1 and 10<sup>th</sup> Street and go to SR 442. There are approximately 30 drains on each side of U.S. #1. The County has donated the marking the City will be using. She feels it is a great awareness. One of their NPDES requirements on our permit is to do the outreach and the resource. Since the County was willing to help them with this, she jumped on board.

Ms. Hilton reported it starts at 9:00 a.m. and they hope to be done by noon. They will all meet back at the Community Center and have hot dogs and chips.

City Clerk Wenzel informed the public that there were flyers in the back of the room in case anyone wanted the information.

#### B. City Attorney

City Attorney Ansay stated they received notice of dismissal in the AH Edgewater case verses the City, the Jones Fish Camp Road project. At this time all the litigation related to that project involving the City has concluded so we are out of that.

City Attorney Ansay stated the decision the City Council made back at the beginning of March to deny the River Club project vested rights has been appealed to Circuit Court. We received a copy of their petition and have been ordered to respond by the court to that by April 29<sup>th</sup>. She was in the process of preparing a response to that. Essentially they argue two main points. The first is that the City Council when it considered the appeal that had been made considered evidence namely an affidavit from Darren Lear when the City's Land Development Code provides their review is limited to the application and the materials evidence in support thereof. Her view of that Land Development Code provision means the materials that were submitted related to the application on both sides they consider. Their argument is unless the materials support or are in favor of the application, they can't consider it. If that is the

case they could only always hear one side of the story. They will respond to it. The other argument is that they think the City Council was wrong and that they are vested. She didn't expect to have a determination quickly. We will file our response and she assumed the judge would want to schedule a hearing to get them all in there to talk about. She was sure it would be many months from now.

Councilwoman Rhodes asked what the progress was on the declaratory. City Attorney Ansay stated they are very close. They are waiting for some information. They have been going back and forth with City staff on some information they needed to finalize it. They have a pretty good draft and it is going to get filed very soon. They have been trying to decide how to proceed with who to name in the suit. They made the decision that they are going to name not only ECARD but also the very small universe of landowners that own property west of I-95. They have to make sure they have the actual legal property owners involved due to them being key parties to this action. That will eliminate the need for them to intervene and plead the court to let them participate. They think they should all be there as a matter of right from the beginning. They will file it within the next week or two.

#### C. City Manager

Acting City Manager Barlow commented on meeting with the Teamsters on Friday. They have a vote scheduled for April 28<sup>th</sup>. He would like to try to schedule a date that they can put together an Executive Session by chance they don't vote in favor of this contract that they can meet again. He suggested May 1<sup>st</sup> all day or evening, May 7<sup>th</sup> evening or May 8<sup>th</sup> all day or evening.

It was the consensus of Council to plan for May 7<sup>th</sup> at 6:00 p.m. if an Executive Session is needed.

Acting City Manager Barlow informed Council of the County having a special meeting on April 29<sup>th</sup> at 4 p.m. for the County and cities to share thoughts and priorities for 2008. He and Mayor Thomas are attending. He asked the Council if anyone else was interested in attending.

Councilwoman Rogers asked when their workshop was with Restorations. Acting City Manager Barlow informed her it would be held on April 28<sup>th</sup> at 7:00 p.m.

Acting City Manager Barlow agreed to provide an update on the sidewalks in Meadow Lake Subdivision. They hope to have that finally resolved and work progression there by the next meeting.

Acting City Manager Barlow asked the Council if there was any interest in putting together or looking at designs for updating or changing the City seal. Councilwoman Rhodes commented on the cost to change the seal due to it being on everything. Acting City Manager Barlow stated if they landed on something it could be a 24 to 26 month transition period. He estimated the City has had the same seal since the 1950's or 1960's. Councilwoman Rogers felt they should look at the seal once we get a new City Hall.

Councilwoman Rogers asked how what the total was that City collects for water and sewer on the minimum. She asked how much of the revenues that we have do we receive in that amount for the water and sewer minimum and how much does it actually cost the City. We have to be making more than break even on those. She commented on the transfers that occur at the end of the year. Finance Director McKinney stated that would be a good thing he will be working on with potentially a rate consultant on our fees for our utility services. They will probably be coming back at the next Council meeting to approve a rate consultant. He and Brenda will be working with the rate consultant and all of that stuff can come up. He commented on them needing to know every utility customer, the type of meter and their consumption history.

Councilwoman Rogers commented on the accounting software. From what she understood in the past it wasn't utilized so it wasn't efficient. She asked his opinion of the software.

Finance Director McKinney stated he is a big systems user. He believes if you can't use your enterprise wide software then you are only as good as what is in the system. Councilwoman Rogers confirmed he was working on using the software rather than stopping and throwing it to an excel spreadsheet. Finance Director McKinney stated he had until May 30<sup>th</sup> to finish the CAFR. As soon as he is finished with that he goes right into the proposed budget. Where he came from before the entire budget was presented to Council and the citizens through Qrep, which is Crystal Reporting.

Councilwoman Rogers informed Finance Director McKinney any software programs he thinks they should look at in the future that he should let the Council know what those programs are.

Acting City Manager Barlow commented on being locked into HTE. He commented on concerns and problems in the past was so much software related as it may have been user and lack of training. They have already addressed some of those deficiencies. With bringing Finance Director McKinney on that has considerably more experience with this particular program they are able to use it more to its capacity and design.

Councilman Cooper asked if the rate survey consultant would be looking at the service charge for non-use residents that are snow birds and maybe changing that policy once they have all the data to see how much it would really cost us, would we lose money, is there an easier way to do this so we aren't constantly filing liens. He asked if that would be part of his investigation. Finance Director McKinney informed him that would be something they would ask the rate consultant to do. Absolutely. If other local cities charge a \$15 late fee and we charge a \$50 late fee are we comparable. All of the fees related to our utility services would be looked at across the board. He then commented on the question of how other cities do it. He further commented on revenue replacement and whether there is some area they should have been collecting revenue that they haven't been.

Acting City Manager Barlow pointed out that the next two years there is going to be a lot of research and getting things organized and in place for the economy change in 2010. The rate study is one of them. They want to make sure our rates are adequate. That will be the time they will bring back the policy as it relates to whether they hold the owner or the tenant accountable for the utility bills.

Councilwoman Rhodes stated a couple of years ago when they changed the meters the company that did that, they guaranteed the City that putting the new meters in would save the City money. If the City didn't save money, then they paid for it.

Councilman Cooper asked if the survey would include the possibility of outsourcing to our neighbor City in the south. He spoke of phone calls he is receiving. He would like to see a meeting set up but without the factual information it doesn't do any of them any good.

Acting City Manager Barlow asked if he was talking about outsourcing services. He explained once they do the rate study that will give an opportunity once they know how much it costs to provide that service. If that is something Council wants to entertain at the request of a neighboring City they will have a rate structure. The rate study is going to identify how much it will cost to provide the service.

Acting City Manager Barlow commented on the agreement between the City and the County where we provide wholesale water to them south of the City and we also have individuals that live in the unincorporated areas of Edgewater that are direct customers of the City of Edgewater and they have a 25% surcharge on their water.

Mayor Thomas commented on realizing there is a problem existing and they are using every available resource to correct the problem.

Mayor Thomas asked if anybody knew when the river cleanup was. Ms. Hilton informed him May 3<sup>rd</sup>. He asked to get that information to the public. Ms. Hilton informed him it is currently on our website and posters have been passed around throughout the City. Mayor Thomas asked for the newspaper reporters to put something in the newspaper. Ms. Hilton informed him the County was in charge of it.

#### 1) Tentative Agenda Items

There were no Tentative Agenda Items to be discussed at this time.

### 11. CITIZEN COMMENTS

The following citizens spoke:

Pat Card, 3019 Willow Oak Drive, stated every year at this time Law Enforcement personnel all over the United States participate in something called the Law Enforcement Torch Run. They raise funds for international Special Olympics

for mentally and physically challenged youths and adults. Last year it raised \$23.7 million. The Police Department takes part in it every year as do all of the Police Departments throughout Volusia County. The Torch Run starts in two areas, one on the east side and one on the west side. The Edgewater PD has participated for the last eight years. The last two years we have been fortunate enough to end the Volusia County east Torch Run here in Edgewater. This Torch Run begins at the Volusia County border north and comes clear to Edgewater and ends here and then we pass the torch on to someone else. It will be held across the street at 11:45 a.m. on Wednesday of this week. The Police Department will participate and he was hoping he could get enough people from his club this year so he could ride a bicycle with these people but unfortunately it didn't work. He hoped all of the Council would come. What is most important is that they understand that this is something the Police Department has done every year and goes out of their way to do it and generates a ton of money for international Special Olympics. They are the number one cash contributor to international Special Olympics for disabled kids. They should be very proud of them for it.

**Mike Visconti**, 316 Pine Breeze Drive, stated when a household has a water leak from the street to the meter that belongs to the City. If it is from the meter to the house that is the homeowners responsibility. He asked if there is a leak from the meter to the house and you can not see the water leaking, is there any possible way for the City or someone to notify the homeowner that they have a leak. It happened to his house.

Councilwoman Rhodes stated it happened at her house too.

Acting City Manager Barlow informed Mr. Visconti that the City would know about the same time the homeowner knew, when they receive the bill. They would know if they saw a large spike. Mr. Visconti commented on having his bill automatically taken out of his checking account. He commented on it costing him \$2,000 to have a leak fixed under his house that had been leaking for months. Acting City Manager Barlow again informed Mr. Visconti they would have no way of knowing until the homeowner called because of a spike in their water bill. Brenda sends her staff out and they help the homeowner determine what the spike was from and assist with locating the leak. Unless the

homeowner calls, there is no way they would know if someone had a leak.

Richard Hill, 1570 Tatum Boulevard, commented on the excess noise of flight training at Massey Airport. He stated EPIC Aviation based out of New Smyrna and Phoenix East which is based out of Daytona Beach and occasionally Embry Riddle comes there also. He has been there since 2001 and the flight traffic has increased dramatically. He spoke of having three or four planes in a pattern. They are circling your house every minute for twelve hours a day. In addition to the excess noise they fly too frequently and endanger people on the ground and unsafe flight practice by taking off down wind and on a much too frequent basis. His wife has spoke with Mr. Barlow about this and there are other neighbors in the area that are concerned about it. In the last year or year and a half it has gotten out of hand. The noise pollution is incredible. These flight schools aren't based out of Massey. He followed the chain of command to follow the right way to do things. He was told by the FAA they are doing nothing wrong. DOT said he's private/public so to contact him. He has made several attempts and doesn't get a phone call back. He made one contact with Massey Properties and her way to solve it was for him to move and that she was a real estate broker and could help him sell his house. He asked if the City of Edgewater could look at something and do something. The flight school says they have the right to be here and they are going to keep flying and they are allowed to do it.

Councilwoman Rhodes stated technically they are. She is saying this because they have had this before. The FAA was contacted and they are the ones that have jurisdiction. She didn't know if they violate the noise ordinance and if the City could do something about it. Acting City Manager Barlow stated he, City Attorney Ansay and Assistant City Attorney Ciocchetti have talked about this the last couple of months and done some research.

City Attorney Ansay stated they were asked by Mr. Barlow to look at the issue and they just started some initial communications with the same folks the gentleman has talked with. She has been involved and represented cities with airports before. What makes this situation unique is you have a private airport. New Smyrna Beach is controlled by the City. Most airports that are open to the public are controlled publicly. Here it is a little unique. Most

cities that have airports within their jurisdictions have ordinances that specifically govern the operation, the hours, the noise level that can exist at the airport. The City doesn't have anything like that at this point. It is usually beyond the noise ordinance that applies to automobiles, parties, etc. The issue really is enforcement. As she understands it, what is happening sometimes with the touch and gos and some of the maneuvers that are being done, if the owners of the property can't control it, citing and trying to locate a plane that is coming in and doing a pass by an airport gets difficult.

Councilwoman Rhodes asked if they could cite the owner since this is private. City Attorney Ansay stated if the owner is opening up the airport to those people yes. What often happens is you have a landing strip and you have pilots that come and do a touch and go and buzz and go off. They don't always have the permission of the property owner. Getting those issues straight is what becomes difficult. They also have a lot of issues to sort through on grandfathering.

Councilwoman Rhodes stated when this came up before they were told the FAA controlled it and that they couldn't do anything about it. City Attorney Ansay stated they have spoken with the General Counsel and folks all the way through FAA. The FAA and Federal Government does preempt certain things. You can't shut down the airport. They can through their home rule powers and legitimate health safety welfare power they have as a municipality regulate things like this. Almost every city that has an airport in their jurisdiction has an ordinance that deals with noise and that kind of thing. Airports controlled by the City are so much easier to enforce. It becomes so much more difficult when you have got a private airport with a private landowner that controls it and they are passing the regulation and now they have to enforce against them. She thought there were ways they could work it through. They have been gathering the information and they will continue to work with the City Manager on coming up with something for Council to think about.

Councilwoman Rhodes asked if they would be able to do an ordinance now. City Attorney Ansay stated certainly they couldn't pass an ordinance now that would prohibit the use of that property as an airport, that would be vested and a legal non-conforming use. However, things like noise, that

wouldn't be vested, hours of operation, those types of things are things that could be put into place now that would be able to be enforceable now. They are looking at it and are aware of the issues and hopefully they can come back soon with some solutions.

Councilman Cooper asked if the real issue was that New Smyrna's airport couldn't take that many flights because of the banner flights all the time. To do the touch and gos for ERAU this is a nice small airport and they are utilizing it. He asked if they could look at an ordinance where they might be able to regulate the number of classes.

Councilwoman Bennington stated but if he's not operating out of the City, he's just utilizing a private airport within the City, how do you limit his classes. Councilwoman Rhodes commented on the class being in Daytona and they come here to do the touch and gos, then they go back to Daytona. How do you regulate that?

Councilman Cooper stated if he doesn't have a contract they might have a chance. City Attorney Ansay stated she thought that just as a legal proposition, regulating the harmful or negative effects of an activity is one thing and case law usually finds that is something that is acceptable. When you get into things like you can only have five flights a day you better have a real good method of establishing why five, how did you come up with five and not six, where the harmful effects are with six and not five. Noise ordinance and hours of operation are very clear and have been established. Those are the types of ordinance that have been upheld and certainly are reasonable and rational to achieve the goal she thinks everybody would have in mind.

Councilwoman Bennington state public safety with the road, Park Avenue, the houses around it, the touch and gos and the altitude they are flying, isn't that considered a public safety issue too. Can they regulate that kind of stuff. City Attorney Ansay informed her they could but those are some of those issues where if they are going to put in limitations on height, limitations on landing patterns and those kinds of things you need to have experts engaged in the process that have determined what is acceptable and what is not. She can't just draft an ordinance tomorrow saying you can't fly over these houses because it is unsafe without having some. Councilwoman

Rhodes stated especially when you bought the house and knew the airport was there. Mr. Hill stated he was familiar with the area for years and he knew there was an airport there and they didn't think anything of it because before this you would never know. He wasn't advocating shutting the airport down. The flights schools coming down are making it unbearable.

Councilwoman Rhodes asked Mr. Hill if he knew for sure that these flight schools are definitely doing this. Mr. Hill informed her yes. A lot of them have logos on the tail. Embry Riddle has three black stripes on each wing. The majority that he sees is EPIC Aviation. They are a classic two to three to come down. He has spoken to the owner of EPIC Aviation. He doesn't scream and holler at anybody. He tries to work things out. He sounds very sincere but then nothing happens. He talked to him again and he said the only thing that will make him stop flying is a lawsuit. From one extreme to the other. To him, that isn't working anything out.

Councilman Cooper felt City Attorney Ansay had the right idea.

Mr. Hill stated on Sunday he observed three operations going on at one time from his house, a helicopter land, a banner plane take off and three airplanes doing touch and gos and there is no tower. Councilwoman Rhodes stated you have to expect you will have airplanes and helicopters.

Mr. Hill stated even if the flight schools would agree to vary the pattern to give the neighborhood a break. They are affecting a lot of neighborhoods. It's not just his neighborhood. The neighbors he has talked to are fed up with it. Trying to get people to come out and show support is another thing.

Councilwoman Rhodes commented on living on Willow Oak and very often they go over her house and it is low and it is loud. She agreed with Mr. Hill but stated that airfield was there long before anyone in that area was there. Just to be fair.

David Derr, 1970 Tatum Boulevard, stated he was okay until he heard the statement about living next to an airport. They bought their property in 2002 and they built their house almost three years ago. When they built their house

there were no more than 30 or 40 flights out of there a day. He could sit in his yard and fall asleep. They aren't talking about three or four more airplanes a day. He is self-employed and works out of his house and he can't sit in the office with the window open and talk on the phone. This morning from 10 to 12 there were four airplanes in the pattern around that airport constantly. There was an airplane around his house literally every 20 to 40 seconds for two hours straight. This is a dramatic, completely different situation than this airport has ever been that he has heard of. Since New Smyrna Beach enacted their control towers, flight school pilots don't like control towers. It slows them down. They have to make wider patterns. They do less touch and gos. They like it when they are uncontrolled. They literally live at this airport for as far as he knows absolutely no cost to them whatsoever. He spoke of one airplane three or four weeks ago that was in that pattern for three hours straight without leaving. They aren't talking about normal pleasure flying. This is some ridiculously absurd levels of aircraft in that area all day long, seven days a week. To say they knew there was an airport there when they bought the house that has nothing to do with the situation the way it is now. The situation the way it was then was perfectly acceptable. He would have no problem with that and no one he talked to about the situation would have a problem with that. It's beyond comprehension that that can go on as long as it does.

Councilwoman Rhodes stated they are still going to have to afford them hours of operation. Mr. Derr stated why couldn't the cities that they pay their business permit fees and the airports they operate out of, why can't they afford them the time. They don't even need to come to this airport to begin with. He mentioned a list that is on the website that Rhonda Walker put out of all the flight schools around that area when they did their voluntary touch and go schedules. Just about every one of them uses that airport on a fairly regular basis.

Councilwoman Rogers stated she travels Park Avenue, Old Mission Road to get out to I-95 and on more than one occasion when she has come back going east on Park Avenue between Old Mission and U.S. #1 she will jump and look up and here comes a plane. She was wondering why they were flying so low. Now she is kind of getting a clue. The touch and go.

Councilwoman Rogers commented on the safety factor. The fact that he is talking about the fact that they are using this airport because there is no tower. Mr. Derr stated that is the main reason they are using it. Flight school pilots don't like controlled facilities because it slows them down.

Councilwoman Rhodes asked how they stop it. Mr. Derr stated he wasn't asking that it be stopped. Councilwoman Bennington stated the City Attorney is looking into it.

Councilman Cooper asked if they can contact Massey Airpark and find out what is the contract status is with these flight schools. If there aren't contracts, he may be able to solve some of this problem. If there are contracts, he may be able to vary the flight patterns. He feels they need to go to the source.

Councilwoman Bennington stated if they are using Massey Airport, the Massey's know.

Acting City Manager Barlow stated they have had conversation with Doris Massey. She is and has been aware of the problem. He thought maybe she would be here this evening. He didn't get the impression that there is any interest in changing behaviors out there. They are aware of the problem and aware of the complaint. The airpark at the other end of the runway has made numerous complaints. They went through this several years ago with the Wildwood residents. It's been an on-going problem. He agreed to work with City Attorney Ansay and look into it. It's challenging.

Councilwoman Rhodes stated there has to be some other areas that have had this same problem and solved it.

Acting City Manager Barlow stated he spoke with Assistant City Attorney Mike Ciocchetti who has had an opportunity to talk to FAA and FAA pretty much said it falls under the Aviation division of DOT. His conversation with him was he was hoping that same scenario was they have had to address this elsewhere. DOT told them if they get a good handle on it and to let them know.

Councilman Cooper felt maybe some cooperation was all that was needed.

Acting City Manager Barlow commented on trying to establish a meeting with one of the Massey's to have a conversation. He felt if one of the Councilmembers was there it may bring some clout and he was willing to coordinate that. Councilman Cooper presented some suggestions that might be talked about. He agreed to go with Acting City Manager Barlow to talk to the Massey's.

Councilwoman Bennington stated Massey's when they wanted the City to vacate the buffer so they could build the houses with the hangars, when they went to the Planning Board and the Planning Board said they didn't want to do that, he said they could put a pig farm back there if they wanted to so they caved in.

Mayor Thomas stated so they are working on the problem. Acting City Manager Barlow stated they are researching. Don't take this as any promises but they are working hard.

Councilwoman Rhodes felt bad for the people but it is the residents' rights against the airports rights and how they resolve that may take some time to do. Mayor Thomas stated a lot of legal issues.

## **12. ADJOURNMENT**

There being no further business to discuss, Councilwoman Bennington moved to adjourn. The meeting adjourned at 9:50 p.m.

Minutes submitted by:

Lisa Bloomer