MEETING OF THE CITY COUNCIL
PLANTATION, FLORIDA

MAY 20, 2009

The meeting was called to order by Councilwoman Bendekovic, President of the City Council.

1. Roll call by the City Clerk:

Councilmember:	Diane Veltri Bendekovic
	Jerry Fadgen
	Robert A. Levy
	Peter S. Tingom
	Sharon Moody Uria
Mayor:	Rae Carole Armstrong
City Attorney:	Donald J. Lunny, Jr.

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2. The invocation was offered by Councilman Fadgen.

   The Pledge of Allegiance followed.

3. The City Council Minutes for May 6, 2009 were approved as printed.

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ITEMS SUBMITTED BY THE MAYOR

Councilwoman Bendekovic congratulated Mayor Armstrong on receiving ***The President's Award*** from the Broward League of Cities.

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Mayor Armstrong read a Proclamation designating May 17 - 24, 2009 as ***National Safe Boating Week*** in the City of Plantation.

The Proclamation was accepted by Jim Pinkston of the Coast Guard Auxiliary.

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Mayor Armstrong read a Proclamation designating the month of June 2009 as ***Broward Attractions and Museum Month*** in the City of Plantation.

The Proclamation was accepted by Shirley Schuler.

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Resolution No. 10553

4. **RESOLUTION** of Appreciation to Darlene Vlazny for her service on the City of Plantation Educational Advisory Board.

Motion by Councilman Levy, seconded by Councilman Fadgen, that Resolution No. 10553 be approved and adopted. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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Resolution No. 10554

5. **RESOLUTION** of Appreciation to Jeanne Ingino for 13 years of dedicated service to the City of Plantation.

Motion by Councilman Fadgen, seconded by Councilwoman Bendekovic, that Resolution No. 10554 be approved and adopted. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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Mayor Armstrong presented Service Awards to the following Firefighters:

Fire Chief Pudney	35 years
Division Chief Blake Estes	25 years
Support Chief Marti Terziu	25 years
Firefighter Kenneth Keogh	20 years
Firefighter Frank Alvaro	15 years
Firefighter Nelly Camm	15 years
Firefighter Michael Reece	15 years
EMT Todd Simpkin	15 years
Lieutenant Steven Blanchard	10 years
Firefighter Cary Blanchard	10 years
Battalion Chief Denise Johnson	10 years
Firefighter Kevin Orth	10 years
Firefighter Herbert Northwalton	10 years
Firefighter Olga Ruiz	10 years
Firefighter Mary Barth	5 years

Firefighter Kevin Bennette	5 years
Firefighter Steven Cicione	5 years
Firefighter Jim Clark	5 years
Firefighter Philip Eaton	5 years
Firefighter Brian Glaros	5 years
Firefighter Donald Huneke	5 years
Lieutenant Mark Johnson	5 years
Firefighter Frank Luengo	5 years
Firefighter Steve Maturse	5 years
Firefighter Steven Merritt	5 years
Firefighter Murat Saglam	5 years
Firefighter Michael Sandoval	5 years
Firefighter Pierre Skinner	5 years
Firefighter Raymond Slavin	5 years
Firefighter Joseph Sparacino	5 years
Lieutenant Christopher Terwilliger	5 years
Firefighter Christopher Wallett	5 years
Firefighter Tony Woolley	5 years

Congratulations were offered.

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Mayor Armstrong presented Service Awards to the following employees:

Edward Davis	Parks & Recreation	25 years
Sergeant Rudolph Brown	Police	20 years
Officer Christian Martin	Police	20 years
Chief Robert Pudney, III	Fire	20 years
Officer Deanna Saunders	Police	20 years
David Wilson	Public Works	20 years
Sergeant James Dourvetakis	Police	15 years
Charles Dragone	Public Works	15 years
Andrea Hanlon	Police	15 years
Wesley Pembleton	Public Works	15 years
Carl Singh	Police	10 years
Willie Baker	Public Works	5 years
Johnnie Knox, III	Public Works	5 years
Rebecca Prieto	Police	5 years
Melissa Ramirez	Library	5 years

Congratulations were offered.

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Mayor Armstrong announced the Memorial Day Service will be held at Veteran's Park on Lauderdale West Drive. She invited the public to attend.

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Mayor Armstrong indicated the County would be conducting an Expo and Open House on Friday, May 29, 2009 from 10:00 a.m. to 2:00 p.m. at the Emergency Operation Center in preparation for the upcoming hurricane season.

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Councilwoman Bendekovic expressed appreciation to Mayor Armstrong and the Chamber of Commerce for the annual Prayer Breakfast.

Mayor Armstrong also extended special thanks to the Plantation Association of Clergy for this very meaningful event.

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Jim Romano, Director of Parks and Recreation, announced summer class registration would begin on Tuesday, May 26, 2009.

Mr. Romano also noted the summer camp program begins June 8 through July 31, 2009. There are several spots still available in Sessions A and B.

Mr. Romano also announced they accommodated 18 families, 30 children, with the Summer Scholarship Program for just under $11,000. He expressed appreciation to the non-profits for their donations.

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Councilwoman Bendekovic introduced Stefano Perez, President of the McFatter Student Council and recent inductee into the Honor Society.

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CONSENT AGENDA

As a Commissioner of the CRA, Mayor Armstrong had a voting privilege on Items #15 and #19.

Items #8, #9, and #11 were removed from the Consent Agenda and discussed separately.

Mr. Lunny read the Consent Agenda by title.

6. Approve authorization to extend the Utilities Department's lift station maintenance contract with Butler National Services, Inc. for one year at the same terms, conditions and pricing as the original contract.

Resolution No. 10555

7. **RESOLUTION** to apply for an Office for Domestic Preparedness, Department of Homeland Security competitive grant.

Resolution No. 10556

10. **RESOLUTION** confirming a Plantation City Lien of Utilities Service Charges for 391 SW 54 Ave. (Wilkinson)

Resolution No. 10557

12. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period April 30 – May 6, 2009.

Resolution No. 10558

13. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period April 30 – May 6, 2009 for the Plantation Gateway Development District.

Resolution No. 10559

14. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period April 30 – May 6, 2009 for the Plantation Midtown Development District.

Resolution No. 10560

15. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period April 30 – May 6, 2009 for the City of Plantation's Community Redevelopment Agency.

Resolution No. 10561

16. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period May 7 – May 13, 2009.

Resolution No. 10562

17. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period May 7 – May 13, 2009 for the Plantation Gateway Development District.

Resolution No. 10563

18. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period May 7 – May 13, 2009 for the Plantation Midtown Development District.

Resolution No. 10564

19. **RESOLUTION** approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period May 7 – May 13, 2009 for the City of Plantation's Community Redevelopment Agency.

Motion by Councilman Fadgen, seconded by Councilwoman Uria, to approve tonight's Consent Agenda as read. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

Note: Mayor Armstrong voted affirmatively on Items #15 and #19.

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Resolution No. 10565

8. **RESOLUTION** to apply for a Florida Department of Transportation Transit Service Development Grant Program.

Mr. Lunny read Resolution No. 10565 by title.

A memorandum dated May 13, 2009 to Mayor and Members of City Council from Laurence Leeds, Director of Planning, Zoning and Economic Development, and Charity Good, Economic Development Coordinator, follows:

Staff has been in conversations with FDOT regarding the anticipated 2009-2010 start-up of I-595 Express Bus linking Weston and Downtown Fort Lauderdale with a potential stop adjacent to Midtown. FDOT has suggested they would partially fund Midtown trolley service if the City provides connectivity between the Western Transit Hub (adjacent to the Regional Library) and a yet-to-be determined I-595/Midtown Express Bus Stop.

Midtown trolley service was discontinued last year due to poor ridership. FDOT has historically advised the City that the previous FDOT subsidy (about $60,000 per year, per trolley) would continue if City chooses to reactivate trolley service. On May 13, 2009, FDOT changed their position, indicating the City would have to re-apply for FDOT funding to support a reactivated trolley. The deadline for applying for these funds is May 27, 2009. Failure to apply for funds now may delay the City from applying until May 2010.

The application, prepared by Economic Development Coordinator Charity Good, provides the details of the proposal, including new route boundaries and necessary matching Midtown funds (between $170,000 and $180,000 per year). Staff will be discussing the grant application with the Midtown Board on May 19 and report their comments to City Council on May 20.

Councilwoman Bendekovic felt it was premature to make an application for this grant. Her view was that if FDOT wants this connector, they should pay the entire bill rather than having an in-kind match of $170,000 by the City.

Mayor Armstrong commented on the need for submitting the application at this time, noting that all of the grants or funding provided through FDOT and the Transportation Program must be done long in advance of them ever being awarded or implemented. If the targeted deadline for filing is not met, the City will miss the cycle for a full year. This grant is being requested as a replacement for the original grant that the City had when it was doing the full trolley system. The discussion and recommendation at this time is to look at bringing the trolley system back on line, although it will not be the same full system that was previously in place until the economy can support the need. At the time the award is made, the City may decide it does not wish to move forward. She encouraged Council to approve the Resolution.

Mr. Leeds advised the Midtown Board supported the application. He commented there will not be a reply from FDOT until August or September 2009 at which time the second issue can be addressed. Even if the City agrees to submit the application, funding is not available until July 2010. This is a preventative measure to apply for funds in case the City decides to use them. If the application is not submitted, there will not be another opportunity until May 2010 and those funds will not be available until July 2011.

In response to Councilwoman Uria, Mr. Leeds indicated the Board only supported the submission of the application.

In response to Councilwoman Uria, Mayor Armstrong advised there are six trolleys, four of which are on lease with Nova Southeastern. The trolleys will be left at that location as long as Nova has a use for them. The program will be brought back on line some time in 2010. Another application can be submitted, if things look promising, to bring the whole program back on line the following year in 2011, which is the primary focus and intent for the District.

Councilwoman Uria clarified she was not interested in breaking the lease.

Councilman Fadgen noted that grants have been considered in the past. He questioned whether the application could be approved and flagged for City Council approval on a Consent Agenda as to accepting the grant if awarded.

Mr. Leeds advised in order to meet the deadline; the City Council would have to approve the application for the grant during this meeting. The City Council can always change its mind at a later time, depending on conditions.

Mayor Armstrong indicated the item would be brought back before City Council because there are still some open ended questions relative to the routing, the implementation of the program, whether the vendor would continue on this segment of the program or whether it would be done through the City's Public Works Department.

Councilwoman Bendekovic commented that Dade County received stimulus money in the amount of $4.1 million dollars and is looking to purchase 25 trolleys. If selling the trolleys were considered perhaps they might be interested in purchasing them.

Mayor Armstrong indicated the City will not get anything from selling the trolleys. Hopefully Midtown will be able to benefit from the program and the trolleys will get back into serving in the manner that was anticipated.

In response to Councilwoman Uria, Mr. Leeds clarified that $170,000 would be the maximum match. Since the Mid Town meeting, he has requested a review to see whether that match could be reduced. The boundaries the trolleys would be serving are provided in the backup. There was discussion at the Midtown Board about extending a route down Cleary Boulevard from Midtown to Nob Hill Road and Cleary Boulevard and back. The Midtown Board did support that in concept.

Councilwoman Uria stated she would probably support the motion because it would come back before City Council; however, she was not certain this was a good expenditure of funds.

In response to Councilman Tingom, Mr. Leeds advised if only 40% is supported the question would be whether the City wants to negotiate back to 50%. He believes this should be discussed when the issue is brought back before City Council. The City can apply for the application and be awarded to receive the grant; however, if the City Council chooses not to receive the grant there is no negative effect.

Councilwoman Bendekovic would prefer to see the money used for capital items instead of the trolleys.

Dennis Conklin, resident, was in support of Councilwoman Bendekovic's objection. The action of not going with the grant would set a good example for the State of Florida for not being frivolous with the taxpayers' money. He urged the Council to follow Councilwoman Bendekovic's suggestion.

Councilman Levy noted as things get tougher economically more people are utilizing public transportation and the Midtown trolleys would serve as a feeder to greater transportation. Recently the County attempted to stop the bus service to American Express that many employees coming from the eastern part of the County use to get to work. He believes the City should review providing an opportunity for people to move around, especially in the Midtown area and the Residence of Fountains that will bring thousands of more people to the area. He firmly believes it is important to be ready to move those people, inexpensively, to the businesses and shops as well as to other areas of the community where their funds can be multiplied and utilized by all of the small businesses and others. He concurs with Councilwoman Uria in every comment made and feels at this point the money is not being spent but an opportunity is being allowed to look at this in a year to see whether it is something valuable.

Owen Duke, resident, advised the Mid Town Board felt the same as Councilman Levy. They are not requesting a decision with regard of what to do with the trolleys; they want to keep their options open.

Motion by Councilman Fadgen, seconded by Councilman Levy, that Resolution No. 10565 be approved and adopted. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria
Nays: Bendekovic

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Resolution No. 10565

9. Deferred **RESOLUTION** appointing the fifth member to the City of Plantation Police Officers' Retirement Board. (Zirk)

Attorney Lunny explained that the City has an ordinance in Chapter 2 of the City Code, which has been in place since prior to 1964, that requires all members of the City's appointed boards, committees, and agencies, to be City residents. He noted that Chapter 18, which is the chapter the police officers retirement attorney examined, along with the State Statute concerning police officer pensions, should be read to indicate that a non resident member is allowed. The policy of the City and the ordinary law of the City is that residents should be utilized and there is an implied exception of the policy in one area of retirement boards. That means the matter can be sent back to the retirement board with a request for them to consider a resident and if they choose not to do so, the law is that the request must be approved. The question then becomes whether the matter should be referred back to board for a second consideration to see if they want to find somebody more in keeping with the ordinary City policy or whether the City Council wishes to act on the matter and approve the request.

In response to Councilman Levy, Attorney Lunny indicated that as a member of the retirement board, if you choose to change your mind and send another candidate you are free to do so. After debating with colleagues it might be decided that this person might be the very best.

In response to Councilwoman Bendekovic, Attorney Lunny advised the City has a general ordinance that states you have to have City residents. The State law is silent on the issue as to whether the fifth member must be a City resident. The State Legislation states two legal residents of the City must be picked; police officers have to select two and those two select another. Arguably, if the State felt there should be three legal residents or felt the fifth had to be a legal resident, it could have been written.

Councilwoman Bendekovic stated she voted to approve Mr. Zirk, but at the time she was not aware of the City ordinance. She prefers having a City resident but stated that Mr. Zirk is very well qualified.

Mr. Lunny is quite confident that Counsel for the retirement board was looking at Chapter 18 and the State Statute and not looking at Chapter 2. As a courtesy, he sent Chapter 2 to the Counsel and there is no disagreement between the respective views concerning the interplay between State and Local law. The Board can be requested to reconsider in light of the overall City policy; however, if the Board chooses to keep the individual then the Council has two choices; either litigate the issue or approve the individual, which he feels would be the right thing to do.

Councilwoman Uria preferred to see a Plantation resident. The fifth members on the other two retirement boards are Plantation residents. She is certain the Board could find someone in a City of 85,000 residents.

Attorney Stuart Kaufman, counsel for the retirement board, commented that millions of dollars are managed on behalf of the fund and they want to provide benefits for the police officers; therefore, it is important to have someone highly educated and qualified. Mr. Zirk retired as a Lieutenant with the City of Miami and sat on the City of Miami Municipal Police Pension Board for 20 years. Florida law currently provides that trustees' terms are two years and when there was a turnover a new trustee had to be brought up to speed on very complicated issues. A new law was recently passed that would allow municipalities to extend the term from two years to four years, which would bring the additional educational experience to the board. It is believed Mr. Zirk is probably the best experienced candidate for the position.

In response to Mayor Armstrong, Attorney Kaufman was not aware of any solicitations or RFP's in an attempt to find anyone in the City. Mr. Zirk submitted his resume to the Police Officer Trustees on the Board and it was brought forward at the meeting.

Mayor Armstrong felt that perhaps the Board should get the word out to Plantation residents to determine whether anyone has an interest and would respond.

Motion by Councilman Tingom, seconded by Councilman Fadgen to refer back to the Board to find a City resident. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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Resolution No. 10566

11. **RESOLUTION** relating to the State Revolving Fund Loan Program; making findings; expressing support for the project as being essential to the health, safety, and welfare of the City's inhabitants; authorizing the loan application; indicating that the City will repay the Loan Debt Service with a covenant to budget and appropriate non ad valorem revenue; designating authorized representatives; providing that the loan agreement will be approved by future resolution of the City if the application is approved; providing severability, and effective date.

A memorandum dated May 14, 2009 to Mayor and Members of City Council from Hank Breitenkam, Director of Utilities, follows:

The Utilities Department has identified backyard sewers in the Plantation Gardens neighborhood that are in need of insitu-lining, manhole rehabilitation and pump station improvements. To accomplish the design work for phase one of this project we are making an application to the Department of Environmental Protection for a low interest State Revolving Loan (SFF) in the amount of $180,000.

DEP's application process requires a resolution from the City Council in support of this project as well as assurances of loan repayment.

The resolution is submitted for your review and approval.

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Attorney Lunny indicated this resolution would approve Mr. Brietenkam's application for a low interest design loan.

In response to Councilwoman Uria, Mr. Breitenkam advised this is the backyard sewers in the area of Plantation Gardens off of Plantation Road between NW 65th Avenue and East Acre Drive. The project would be split into two phases. The approximate price for the entire project is approximately $5,000,000. They are not just digging up and replacing the sewers, they will be insitu-lined.

Mayor Armstrong indicated there is not anything within the utility structure that does not have a hefty price attached. This design work provides the ability to move forward but to also apply for any of the stimulus money coming in. This project will open the door for stimulus money and the design will be available to submit on the application.

Mr. Breitenkam announced that he recently received a sheet showing the City is on the short list for stimulus money for a water project, Phase E, in Plantation Park, which is the next water main rehab in the amount of $3,000,000.

Motion by Councilwoman Uria, seconded by Councilman Tingom, that Resolution No. 10566 be approved and adopted. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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ADMINISTRATIVE ITEMS – None

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LEGISLATIVE ITEMS

20. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE PERTAINING TO THE SUBJECT OF CITY UTILITY RATES; ADJUSTING THE CITY WATER SERVICE RATES, INCLUDING CUSTOMER BILLING CHARGES, CONSUMPTION CHARGES, AND BASE FACILITY CHARGES, ADJUSTING THE WASTEWATER UTILITY RATES, INCLUDING CUSTOMER BILLING CHARGES, CONSUMPTION COST CHARGES, AND BASE FACILITY CHARGES; ADJUSTING AND CODIFYING THE CITY WATER AND WASTEWATER ADMINISTRATIVE CHARGES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

Mr. Lunny read the Ordinance by title.

A memorandum dated May 14, 2009 to Mayor and Members of City Council from Hank Breitenkam, Director of Utilities, follows:

Following the workshop presentation to the City Council by our rate analyst, Public Resources Management Group, Inc. (PRMG), on May 6, 2009, I am forwarding to you the attached ordinance proposal reflecting my recommended changes in water and wastewater usage rates and associated charges by the Department.

The imperative for the combined 20% water and wastewater system revenue increase on August 1, 2009 and 12.4% on October 1, 2010 is well documented and outlined in PRMG's report of May 6, 2009 from a financial standpoint. In addition, this imperative is especially well founded by global, national and regional calls in the media and by leaders for conservation to ameliorate the effects of global warming and for the replacement of aging infrastructure. Even with the recommended adjustments, Plantation's rates remain quite competitive in the South Florida utility market.

This ordinance proposal is to enact a comprehensive conservation rate structure for this community's utility billing. Simply put: The more a citizen uses of the community's limited water supply, the more they will pay. While it is true that some of our citizens conserve both water and energy for ecological reasons, the number one reason people conserve water is due to price.

So, in order to effectively lower our per-capita consumption of water for environmental reasons and to limit the need for the construction of costly alternative water supply facilities, while at the same time produce enough revenue to replace or rehabilitate our aging water and sewer infrastructure to operate in the 2009/2010 regulatory and fiscal environment, I respectfully present this conservation rate structure for your approval and our citizens' acceptance.

As the global community now sees the need for and embraces the "green revolution," mechanisms such as this conservation water rate can be compared to a patient's mandate from their physician to change their lifestyle in order to correct a serious health issue. One person may see the mandate as being on a diet and not be able to eat certain things, another sees it as living a harmonious lifestyle by eating healthy so that their life can be preserved and enhanced.

This ordinance is meant to preserve, protect and enhance our community's utility system. I respectfully urge your approval.

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Mayor Armstrong commented that this topic was previously discussed during an extensive workshop meeting at which time a great deal of information was provided. It is important for the public to recognize that this is an industry highly regulated by the State and Federal Governments and many of the costs associated with our responsibilities to provide this service are tied to regulations that the City has no control over. Our system is now 50 years old and up until now we have approached moving forward very conservatively with regard to expending dollars relating to the maintenance of the system. We are attempting to get as much funding as possible through grants and other resources but we have to recognize the necessity to do that. The positive side is that the kind of water and customer service delivered by Plantation is well above the average of others who provide the same kind of service.

Mr. Breitenkam indicated that he received a lot of help with the preparation of the report from Administration, Finance, Utilities staff and primarily from Public Resource Management. The very essence of public health is water treatment, waste water treatment and solid waste collection. The challenge at this time in history in South Florida is that the South Florida Water Management District, the organization that is tasked with managing the water supply in South Florida has told all utilities in South Florida that we can no longer take our water from the Biscayne Aquifor to supply our future needs in 2025; therefore, we need to find alternative water supplies which are expensive. One alternative water supply is desalination; taking sea water and making it into fresh water, or drill deeper into the Florida aquifer, which is also salty, and make that fresh. Another way is to take wastewater and treat it to an even higher standard so it can be used for irrigation, either around the City or at the golf courses. It would be very expensive to install purple pipe around the City because there is so much concrete and asphalt. It has been determined that the least expensive way to go is to spray irrigation at the golf courses. The cheapest alternative water supply is conservation. If sufficient quantities of water can be conserved, we will not have to do the full $25 or $30 million dollar alternative water supply; however, some type of alternative water supply must be done. When the sale of water is reduced the revenues go down but at the same time another challenge is that we need to rehabilitate our existing water and sanitary sewer infrastructure. To date, residents have not paid the full cost of water, not only in Plantation but across the United States. The full cost of water is what it will cost to produce the water, pump it to the population, and replace the infrastructure. He requested the Public Resource Management Group do a sufficiency of revenue, as the question was whether the revenues being brought in were sufficient to cover the day to day operation as well as capital projects. The Public Resource Management Group has provided the report and recommendations, which are hardy. He introduced Brian Mantz and requested he give a brief overview of the report and recommendations.

Councilman Levy referenced a Sun Sentinel article with regard to the City of Fort Lauderdale raising their water rates 25%. We are looking at raising water rates along with other cities. He questioned where we stand in relation to other cities and where we stand after the recommended raises go through. Every city is fighting the same battle because of the new requirements regarding water. He also questioned whether what is being considered is the most cost effective for our residents.

Mr. Mantz noted there was also an article in the Sun Sentinel which stated the City of Hollywood was increasing their rates by 29%. The good thing about the rate increases is even if all the increases were implemented, Plantation would still be competitive with what everyone else is charging. He provided a brief overview of the presentation. From their analysis they review financial targets and he believes this is a good financial path to undertake, as the objectives will be accomplished including the necessary renewals and replacements to the system. This presentation is posted online for public review.

Councilman Levy advised he has received calls and emails with regard to the customer billing charge. He requested this be explained for the public. He questioned why customers who pay one year in advance are charged a monthly billing charge.

Mr. Breitenkam indicated the customer billing charge has been an issue ever since it was instituted, probably about eight years ago. There is a cost associated with every bill received and for Utilities it is reading the meters, making the bills, sending them out and customer service. All of this goes into the customer billing charge. This will still be part of the bill but it will be taken out as a separate line item and included in the base charge. With regard to advance payments, those customers are far and few in between. They would have to be removed from the billing population for a special service.

In response to Councilwoman Bendekovic, Mr. Breitenkam indicated new software is being implemented, the Hanson Billing Software, and the online payment is coming in phase 2 of the implementation, which is February or March 2010.

Councilwoman Uria requested clarification with regard to the billing charge in sections 26-186, water service rates and customer billing charge. She is reading that it is going from $2.10 to $0.00 and the base facility charge is increasing. She also questioned whether there would be a yearly 3% increase.

Mr. Mantz explained the base charge is intended to bring revenue stability to the utility recognizing there are certain fixed costs that have to be paid regardless of usage. The water side, which is $9.22, is the customer billing charge and the base facility charge with the rate increase and the $11.86 also includes the rate increase. He indicated the difference of the total base charge is $3.52. The reason of the inflationary index is to keep the utility in tact. The inflation is already built into the numbers and some inflation is assumed in the financial forecast.

Councilwoman Uria noted that her point is there will be a 32% increase for the first two years along with increasing other fees that may or may not have been reviewed. She commented that 75% of the money will be spent for upgrading the infrastructure.

Mr. Breitenkam advised the increases are very competitive and it is a cost recovery.

Mr. Mantz indicated most of the services are customer requested services which are optional. It stands to reason that people requesting the service should be paying for the service and not being recovered through monthly user rates.

In response to Councilwoman Uria, Mr. Breitenkam advised the most common meter size for residential is 5/8 by ¾. There is a range for commercial going anywhere from 5/8 x ¾ up to 12-inch. The important thing is that this is a conservation grade structure and it is meant to promote conservation.

In response to Councilwoman Uria, Mr. Mantz indicated the other cities he represents are also doing the infrastructure rehab. This is an extremely common problem in Southeast Florida. The utility is currently relying on operating reserves to meet its expenditure needs. The rate adjustments are only being requested through 2011, which will return the utility to a break even status, after which time it is recommended the rates again be reviewed to determine whether the alternate water supply is really needed as scheduled.

Councilman Tingom thanked Mr. Breitenkam and his staff. He believed the letter sent to residents detailed much of the information which has been repeated. He has received questions from several residents. Staff has advised that the Plantation Preserve Golf Course pays the same amount of money for water as all of the other businesses in Plantation. The reuse water plan is dictated by the South Florida Water Management District and that is why this reuse plan is necessary. It is his understanding this is the cheapest alternative to any other type of reuse plan available at this point and time. The other concern was the fact that there was a wage increase built into this plan and again, in meeting with staff, it was demonstrated that a wage increase was based on the previous five years. There was a question with regard to page 5.2, bonding rating, which means by changing the rate structure the bonding rating becomes adequate to withstand some pluses and minuses down the road. Even though he prefers not to increase rates at this time, in order to maintain the higher standard of water in Plantation, he will be in favor of the proposal.

Councilman Fadgen referenced page 5 and noted there are minor errors in the resolution; between each bracket of usage there is 999 gallons of water that will not be billed. He suggested going from 0 to 7,000, 7,000 to 13,000, 13,000 to 21,000 and so on. He next referenced the commercial rates on page 6 and questioned whether commercial should be paying the same as residential.

Mr. Mantz advised it depends on the size of the meter. This is consistent with the existing rate structure.

Councilman Fadgen feels this is an enterprise fund activity and just because it is an enterprise does not mean it is immune from drastic action. The City has a need for clean good water and the existing pipes throughout the City are delivering water through some of the old pipes which is what needs to be addressed.

Mr. Breitenkam indicated that in order to make sure customers get clean water there is a lot of maintenance and flushing that needs to be done. The sooner the pipes are replaced the better. They have been replaced all along; however, they need to continue being replaced.

Councilman Fadgen advised there is currently a mandate that there is less water; therefore, if we have a need for water we have to pay for it. The problem is that many residents are either unemployed or under employed due to the economic times. He questioned the impact if half of the $1,455,000 per year was not paid to the City's General Fund

Mr. Mantz noted the first block under the new rate structure is lower. He advised the $1.57 rate is supposed to be effective on October 1, 2010.

Mayor Armstrong indicated the average water consumption is 7,000 gallons and the increase represented $7.56; however, when going below that you actually save money over what had been the previous level of billing based on the existing rate.

Councilman Fadgen reiterated the first phase is in August and the next phase is on October 1, 2010. There is still further relief for someone in the first block of usage consumption if half of the $727,000 payment to the City's General Fund did not occur or was used to reduce the rate.

Mr. Mantz advised this is an administrative policy of the City. These types of transfers are very common but certainly some utilities have what are known as "closed system" where all the money generated within the utilities stays within the utility.

In response to Councilman Fadgen, Attorney Lunny commented that the City Financial System was structured a certain way and years ago Administration put in the charges against the Utility System and then tax reform came along. If the $700,000 were taken out of the Utility System and put back on the ad valorum side for running a portion of the City it would be a lot harder to adjust up with ad valorum if you ever tried to get it back because of the legal mechanisms that are in place. If a structural change is decided remember that the course is set before tax reform and there is more difficulty in going back because of the restrictions on that source of revenue that do not exist on this structure that has been in place for many years.

Councilman Fadgen expressed concern with charges for water, waste water and consumption. He questioned whether a credit, perhaps another 1,000 gallons of water, could be given to single parent households with children under 18 years of age.

Mr. Breitenkam advised that would be hard to keep track of. He suggested other alternative ways to save money.

Councilwoman Uria referenced a previous Workshop meeting and noted that any time something is increased timing is not good. Perhaps in the future this should be looked at during budget time. There was a 16% increase a couple of years ago and a 3% increase every year. This is something specifically that needs to be done for the infrastructure. At the same time we have to look at the cost of delivering services. Everyone is having budgetary problems at this time and no matter where the money is going, it is an increase.

Councilwoman Bendekovic opened discussion to the general public.

George Lord, resident, was present. He questioned how much the total overall increase will generate.

Mr. Mantz explained the 20% increase is anticipated to increase total utility revenues approximately $4,000,000 and the second one will be increasing revenue by approximately $3,000,000 so over the two-year period that will be an extra $7,000,000.

Kingsley Smith, resident, was present. He commented on the recent project in Park East.

In response to Mr. Smith, Mr. Breitenkam indicated when the water mains are in this condition there can be exfiltration where water is lost. The City of Plantation has unaccounted water in the area of 6%. Industry standards are less than 10%. If the water mains are changed, water loss can be eliminated.

Mr. Smith referenced the submission for stimulus money and questioned whether any of that money was estimated towards this project.

Mr. Breitenkam advised they applied for the next water main replacement project, which is Plantation Park Phase E on the east side of Fig Tree Road for $2.3 million dollars.

In response to Mr. Smith, Mayor Armstrong advised there would be no additional costs to those who recently had their system put in place.

Mr. Brietenkam advised the sewers installed were under special assessment; however, the water main that was replaced was paid for by the Utilities Department.

Dennis Conklin, resident, referenced the condition of the pipes and commented on any additional costs.

Motion by Councilman Tingom, seconded by Councilwoman Bendekovic, to approve the Ordinance on first reading. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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Councilwoman Bendekovic referred to the guidelines for those addressing the Council as witnesses having been Sworn in.

All witnesses intending to testify on quasi-judicial items during tonight's meeting were sworn in by Susan Slattery, City Clerk.

QUASI-JUDICIAL CONSENT AGENDA

Resolution No. 10567

21. RESOLUTION approving the Carnez parcel site data record.

Mr. Lunny read the Resolution by title

The Planning, Zoning and Economic Development Department Staff Report and Recommendations follow:

REQUEST: Consideration of a request for site data record approval.

WAIVER REQUEST:

1. From Section 20-75, for a period of time not to exceed 9 months to meet the requirements for consideration by the City Council.

EXHIBITS TO BE INCLUDED: Planning and Zoning Division report; subject site map; Site plan application; and Review Committee Meeting minutes of June 24, 2008.

REVIEW COMMITTEE RECOMMENDATION: Recommendation of **APPROVAL** subject to staff comments (7/0; June 24, 2008).

ANALYSIS:

The subject property is zoned RS-3K and consists of approximately 0.39 gross acres and 0.34 net acres after rights of way dedications associated with NW 26th Street. The site data record application indicates the proposed use is one single family residence. Access to the property is provided from NW 26th Street to the north.

The proposed site data record is consistent with the Low (3) Residential future land use designation on the adopted Future Land Use Map.

STAFF COMMENTS:
PLANNING AND ZONING:
Zoning:

1. This proposal requires a clearing permit from the Building Department before removal of any vegetation or alteration of the existing surface area of the property (Sec.5-201).

TRAFFIC CONSULTANT: No objections.
ENGINEERING DEPARTMENT: No objections.
LANDSCAPE ARCHITECTURE: No comments.
BUILDING DEPARTMENT: No comments.
FIRE DEPARTMENT: No comments.
POLICE DEPARTMENT: No comments.
UTILITIES: No comments.
O.P.W.C.D.: No comments.
WASTE MANAGEMENT: No comments.

Motion by Councilwoman Uria, seconded by Councilwoman Bendekovic, that Resolution No. 10567 be approved and adopted. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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QUASI-JUDICIAL ITEMS

22. REQUEST TO DEFER SIGN SPECIAL EXCEPTION FOR FOUNTAINS RETAIL TO THE JUNE 3, 2009 CITY COUNCIL MEETING.

Motion by Councilman Fadgen, seconded by Councilwoman Uria, to defer the sign special exception for the Fountains Retail to June 3, 2009. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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23. DEFERRED REQUEST TO "PROCEED AT RISK" FOR **RISE ACADEMY** AT MINISTERIO CRISTO TE AMA LOCATED AT 201 SW 38 AVENUE.

Mr. Lunny read the item by title.

A memorandum dated May 20, 2009 to Mayor and Members of City Council from Laurence Leeds, Director of Planning, Zoning and Economic Development, and Gayle Easterling, Senior Planner, follows:

Ministerio Cristo Te Ama (formerly known as Good News Church) is zoned B-6P and developed with two buildings encompassing approximately 24,575 square feet on 1.4 acres. The site is bound by mixed commercial/residential uses to the north, city-owner canal right-of-way to the west, and single family and multi-family residential uses within the City of Fort Lauderdale to the south and east.

RISE Academy proposes to lease the northernmost two-story building containing 9,000 square feet for use as a private elementary school for Grades K through 5 with a present enrollment of 150 students and projected enrollment of 225 students. Elementary schools are permitted within the B-6P district if located on a five (5) acre or larger site. The current site is less than five acres. Based on the city parking code and the applicant's floor plan, 22 paved parking spaces are required. 65 parking spaces are provided, including 34 paved and 31 grass parking spaces. The grass parking spaces can only be used for intermittent church parking. The site plan shows bus loading spaces (in the ROW) adjacent to the street. Parent drop-off stacking spaces are shown in the parking lot at the north end of the site.

Staff directed the applicant to meet with other departments at the March 20, 2009 pre-development meeting. Other then informal discussions with the applicant, no City departments have conducted a formal review of the proposal. Please note also:

- Applicant has been advised that an elementary school requires a minimum five-acre lot size and that the school is not permitted unless the City Council approves a use variance to this requirement.
- Applicant has been advised that prompt submission of the use variance application will expedite the Review Committee comments.
- The applicant has provided a letter indicating they have contacted the Melrose Park HOA to schedule a presentation at their next HOA meeting.
- A trip generation/traffic study has been provided indicating the anticipated bus drop-off and parent drop-off routes within or adjacent to the site. The Engineering Department is currently reviewing this study.
- The Fire Department indicates a pending fire services agreement with the former building owner requires building sprinklers. Fire has indicated the sprinklers shall be installed prior to occupancy of the school.
- The current property owner, Ministerio Cristo Te Ama, has provided a letter stating the meeting times of the church congregation do not overlap any operating hours associated with the proposed school use.
- The applicant currently operates a school in Lauderhill. It is not clear if the applicant intends to relocate the Lauderhill facility or if this will be an entirely new school.

REQUEST:

RISE Academy requests approval to proceed at risk with construction and occupancy while processing the use variance application.

STAFF COMMENTS:

If the City Council chooses to approve the proceed at risk, approval shall be subject to the following:

1) Applicant to submit use variance application and fee by May 26, 2009. If review by the advisory boards is waived by the Planning, Zoning, and Economic Development Director (as authorized by Resolution #10437), the City Council can review the use variance in late July or early August 2009.
2) While PZED will use best efforts to urge other departments to expedite their review, PZED staff cannot guarantee or promise a building permit or certificate of occupancy will be issued prior to school opening day.
3) No certificate of occupancy shall be issued prior to City Council approval of the use variance.
4) The applicant has provided a letter indicating they have contacted the Melrose Park HOA to schedule a presentation at their next HOA meeting.
5) The applicant and property owner agree that no school parking is permitted on grass parking spaces, and that failure to maintain grass parking spaces is a code violation.
6) The applicant and property owner agree that church services shall not take place weekdays when school is in session.
7) A building permit may be issued prior to Review Committee approval if all of the review agencies provide written confirmation to PZED that their respective issues have been addressed. This includes, but is not limited to, Engineering Department traffic approval and Fire Department confirmation of Fire Services Agreement resolution.
8) Both the applicant and property owner submit letters agreeing to all of the above conditions as part of the proceed at risk.

Attorney Lunny explained this request is a proceed at risk and the City will have a requirement that a use variance application be filed even if this is a public charter school. During a discussion between his office and the State Department of Education, both reached the same conclusions. The concern is that the school needs to open in August and assuming the Council wishes to allow them to proceed at their own risk so they can start to build, install sprinklers and do everything needed to open, the second request of staff is whether once it goes to Review Committee that the Council would allow a waiver of the normal advisory board process to bring it back to Council so they can act on that part of the application as soon as possible. Not only is this a proceed at risk but, because of the time constraints involved, staff is requesting the Councils' advice with regard to getting the advisory boards waived so the applicant can come directly back to Council.

In response to Councilwoman Bendekovic, Attorney Lunny indicated the structures are existing and no structural changes are being made; therefore, this is a use variance with no changes to the structures. Assuming the application is filed and there is not a material traffic impact, the neighborhood agrees, the buildings are sprinkled as required, Fort Lauderdale, which is the owner of the adjacent right-of-way, submits a letter saying access is fine, and all other requirements are satisfied with regard to side impacts, he questioned whether Planning and Zoning Board approval is necessary or whether it could come directly back to Council.

Councilman Levy believed the school is a great use for the facility. He felt the organization is well intended in every aspect. There is an issue relative to what the State law requires regarding the use of the church; therefore, it is something to question. The City's legal counsel is saying one thing and the applicant's legal counsel is saying they are allowed to utilize a church facility as a congregate facility for this charter school and classroom because churches will have Sunday school and other things. They are certainly willing to work with the City and

the City is willing to work with them; the only thing they are asking tonight is to proceed at their own risk in order to get things together. The Melrose Park Homeowners' Association should be involved with the planning and development of something that affects their neighborhood. Traffic and congregate facilities need to be reviewed relative to the impact. He is in favor of the applicant's petition to proceed at risk because he believes it is an asset and will be a wonderful addition to the area.

Mr. Leeds has no objection to waiving Planning and Zoning Board review, as he felt it is not required. One of the requirements was that the application be submitted by May 26, 2009, which would take them to Review Committee at the end of June 2009. They would not be able to get a Building permit under that scenario until after obtaining approval from Review Committee. There are some outstanding issues with the Fire Department and Engineering. Assuming they go to Review Committee and get their permit sometime in early July 2009, it will still be extremely tight. The other option is to apply for a use variance. If they come in and meet all of the departments' requirements prior to Review Committee, they can get their permit earlier. They need to go through the process because they need a use variance; the question is how quickly they can get started. The applicant must be sent to Review Committee as a prerequisite to a permit or they can come in before as long as they understand they still have to address all of the issues prior to the Fire Department and Engineering Department signing off on the permit. His recommendation says that a Building permit may be issued prior to Review Committee if all of the review agencies provide written confirmation that their respective issues have been addressed including, but not limited to, Engineering Department traffic issues and Fire Department commitment to a Fire Services Agreement. If this is approved with the conditions, the application could come in for an expedited review. The applicant would still have to go to Review Committee but they could get the permit before the end of June if all of the conditions are met. The other thing suggested is that the applicant could not occupy the building until the use variance is granted. A Certificate of Occupancy could not be issued.

Councilman Levy suggested asking the applicant what they can do reasonably within the time frame given so that this body can make sure all health and safety requirements are satisfied. He noted that every start up business or charter school, etc., has to be given an opportunity to grow and may not have all the necessary funding to come up with a perfect plan prior to coming in. It would help if they could at least have the same requirements as the previous property owner and allow them to proceed at risk then later come up with additional requirements which could be done while under construction.

Mr. Leeds concurred.

Dr. Carmella Morton was present as the applicant.

In response to Councilman Levy, Dr. Morton advised she is the Founder and Executive Director of the school. They are a state of the art charter elementary school of science and technology currently operating in Lauderhill and are excited to grow and move into the facility in Plantation. They have no issues about following procedure. Dr. Morton has been in the business for more than 27 years and has a PHD in education. She has worked in all levels of education from preschool to teaching on the university level. She understands how important it is to educate the children and also keep them safe. There are no problems with operating under Code and making sure the students are safe. Charter schools are public schools and the one thing that has developed over the last several years is a Statute that protects them and helps them grow because of limited funding. She is concerned about the use variance because the Statute tells them to seek out certain facilities, one of them being a church. If they lease from a church they can do so automatically under the current zoning for that particular church. The Statute was written because charter schools have difficulty finding facilities so the relationship between a church and a school being a tenant was perfect. They can also go into public libraries if they want to lease their space or they can go into another public school. She respects the knowledge of Attorney Lunny but has been in

communication with the State and in following the Statute, sought a facility that would allow them to go in under its current zoning. She has spoken with Planning and Zoning in an attempt to help them understand. They will make sure everything is in order but believe they should not have to file for a use variance according to the stipulations, which say they must be in a five-acre facility. They would like the $5,300 application fee to go toward text books, not to make an application to operate a public school.

Mr. Lunny indicated the issue is if this was a use compliant church and a use compliant site there would be no question about whether a charter school, from a use stand point, would be all right. The problem is that the church site is not use compliant, it is in fact non-conforming. The school that existed, which has not been a school for many years, and maybe at the most was Sunday school, is also non-conforming as to use. Under the facts of this particular application, within the legal frame work, the church cannot have a school; therefore, it has nothing to give this school in terms of a lawful use. It would not be an issue if everything was compliant with the site, the use was fine, there was five acres, and the church had a school they could lease to the charter school; however, those are not the facts in this case. Once that was explained there was never a call back. There has never been an opinion rendered by the lawyer assisting the church, only an argument. Even public schools have to apply to the host City for an evaluation and theory and if the City turns them down a court can decide, under a competing governmental interest test, as to what extent of the City zoning law would apply. In his mind, quibbling over the fee is one thing, but the law is clear. The problem is that the law applied to these facts bounced this case out and into the use variance scenario. A use variance is required. There is no change to the physical structures in the site and the City is in a position of trying to expedite the application and the fee. The question of whether there is going to be a fee is an issue that can be resolved but the fact of the matter is there will be staff waiver expended on this issue. Because the site is non-conforming, this needs to go through the proper analysis from a zoning stand point and, no matter what, the safety issues have to be addressed because there is a change in use. The change in use is from a vacant building to one hopefully full of young children learning and having fun.

Dr. Morton questioned the purpose of the use variance. As she has read from Mr. Leeds, it is not because the facility is not on a five-acre lot.

Attorney Lunny advised a school is not an approved use on that site because the size of the lot is non-compliant. He noted this has been clearly stated to this applicant. The Council can waive the fee if they wish or the Council can attempt to expedite the applicant, but there is a need for a use variance under the City law in an attempt to get the school open.

Councilwoman Bendekovic clarified the use variance is required. What needs to be addressed is whether the applicant wishes to waive or reduce the fee.

Attorney Lunny advised the use variance fee can be addressed; it is not normally waived.

Dr. Morton commented that if they proceed at risk they are risking a lot. To follow use variance protocol raises questions. She reiterated they have been told that they do not have to go through a use variance.

Councilwoman Bendekovic emphasized that Council was being advised by Attorney Lunny that a use variance is required and she is going to agree.

Mr. Leeds believed the applicant is saying she will agree. If she agrees to meet Fire Department comments and traffic comments prior to issuing the permit, she can still go to Review Committee and City Council, which will allow them to move quicker if all of the technical requirements are met.

Mayor Armstrong indicated that the applicant would have to precede with a certain amount of confidence in the fact that they have not heard anyone object to the use of a school at this location, at least up to this point and time. She believes this is a good application. In order to meet the time frame an opportunity to offer a permit prior to the end of June, when the Review Committee meets, is being provided so the requirements can be met. The Review Committee has to meet in order to take care of the use variance. Everything possible is being done in an attempt to get the application through the system so the school will be ready to open in August.

Mr. Leeds believed the key is submitting the use variance application, which must be submitted within the next couple of days, by May 26, 2009. If that deadline is missed; there is only one Review Committee a month. He noted there has been staff time in this case in Fire, Engineering, and Planning and Zoning. There has also been research by the City Attorney in response to this request. He does not want anyone to think this is a simple process without any expenditure to staff.

In response to Councilman Fadgen, Dr. Morton commented that she was aware of the prior Fire Department service agreement. Based on her understanding, she feels they can continue to comply with the agreement.

Councilman Fadgen commented that other issues could come up from the adjacent neighbors.

Attorney Lunny indicated there has not been an advertised public hearing so all of the issues are not known.

Councilman Tingom noted that Monday, May 25, 2009 is Memorial Day; therefore, the application must be submitted on Tuesday, May 26, 2009. He believes the church would be a great use for the school. His only concern was traffic because there is not a paved way for children to get from the bus to the sidewalk and when parents pick up there is a bottleneck as far as entering and exiting the road. Traffic will probably have to go down to NW 2nd Street and come back out on State Road 7 rather than u-turning and going back up to West Broward Boulevard while coming out. Other than that he supports the application.

Motion by Councilman Levy, seconded by Councilwoman Uria, to approve the proceed at risk for RISE ACADEMY at Ministerio Cristo Te Ama located at 201 SW 38th Avenue. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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CONSIDERATION OF COUNCILMEMBERS' COMMENTS

Mayor Armstrong reported on the meeting held last week with the residents of Secluded Gardens. There were a lot of good suggestions, all of which are going to be taken into account when strategizing the implementations that will direct the traffic that was originally on NW 74th Avenue to stay on NW 74th Avenue. Mr. Butler has said there is an opportunity to do the structured changes at the intersection of NW 5th Street and NW 73rd Avenue, which is to put the lane in that we feel is the starting point to getting all of the other things moving forward. They will take the initiative to get a contractor in place to start with that portion of the work and continue to have the feedback and dialogue on the other opportunities that need to be worked through.

In response to Councilwoman Bendekovic, Mayor Armstrong advised the speed cushions on NW 73rd Avenue are being considered, the stop sign at NW 73rd Avenue and NW 6th Street is being considered, the restructuring of the flow on the road as it comes off of NW 74th Avenue around the park is being looked at, the verter to keep the traffic on NW 74th Avenue at NW 7th Street is being looked at and all of those things will be done as the opportunity allows. The starting point is to get the work done on NW 5th Street and NW 73rd Avenue, adjacent to the park.

Councilwoman Bendekovic noted it was her understanding that it might take a year to finally get the equitable traffic design because these will be temporary.

Mayor Armstrong advised that everything will be temporary. Basically an installation will be done for a time period and an assessment will be factored into a conversation with the residents. She is hopeful this will allow an opportunity for a neighborhood group to get together on some other projects.

Councilman Tingom believed moving forward with the lane increase on the east side of the new park would be a positive first step. He suggested seeing how that works out prior to doing other improvements.

Mayor Armstrong indicated notification would be provided as far as the timing and ability to be able to constructively put anything in place.

Councilman Fadgen noted that residents are pleased with the park. He questioned whether the earlier study was done during the NW 70th Avenue construction.

Mr. Butler advised it was not, it was before.

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Councilman Fadgen commented on the new weekly expenditure report.

Councilwoman Uria noted the report provides much more information than previously.

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Councilman Tingom made the following Board appointments:

Code Enforcement – David Pollio
Landscape Planning and Review Board – Pamela Krauss
Planning and Zoning – Dan Austin and Mike Gilden, Alternate
Plantation Health Facility Authority – Randy Dekler
Unsafe Structures Board – Mark Niedzwiedzki

Attorney Lunny read the following resolution titles appointing the stated members to the Health Facilities Authority Board , Unsafe Structures Board and City's Code Enforcement Board:

Resolution No. 10568
RESOLUTION appointing Randy Dekler as a member of the Plantation Health Facilities Authority to serve a term from May 20, 2009 through November 1, 2012.

Resolution No. 10569
RESOLUTION appointing David Pollio to the City of Plantation Code Enforcement Board; and providing an effective date therefore.

Resolution No. 10570
RESOLUTION appointing Mark Niedzwiedzki to the City of Plantation Unsafe Structures Board; and providing an effective date therefore.

Motion by Councilwoman Uria, seconded by Councilwoman Bendekovic, to approve the appointments and that Resolution No's 10568, 10569, and 10570 be approved as adopted. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic
Nays: None

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Councilwoman Bendekovic expressed thanks to Brett Butler, City Engineer, on the exemplary job of facilitating the neighborhood meetings. As a result she believes a neighborhood group may be started as well as Crime Watch.

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PUBLIC REQUESTS OF THE COUNCIL CONCERNING MUNICIPAL AFFAIRS

Dennis Conklin, resident, referenced the April 17, 2009 meeting at which time he requested the City Council consider rejecting the malicious report from Homeland Security, which was never done. He hoped the Council might feel more positive toward his suggestion, as Chairwoman Napolitano has rejected her own Homeland Security Report.

Mr. Conklin also commented on CAIR. He has urged the government to withdraw any further contact with CAIR and noted the FBI has removed all sanctions with CAIR, which was done on April 18, 2009. He submitted a document for the City Council to review.

Mr. Conklin also commented on the defined contribution plan.

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WORKSHOP

24. DISCUSSION CONCERNING RED LIGHT CAMERAS

A memorandum dated May 7, 2009 to Mayor and Members of City Council from the Legal Department follows:

A. INTRODUCTION

This Memorandum is to provide you with information to assist you in your direction to Staff on going forward with implementing and installing "red-light cameras" (also known as photographic traffic signal enforcement systems). This Workshop is sponsored by the Administration with support from the Police Department.

B. GENERAL INFORMATION ON THE TRAFFIC CAMERA DEVICES

Photographic traffic signal enforcement systems consist of digital cameras mounted above the corners of an intersection pointing in all four directions of traffic. There are several companies that operate these systems, with a few in South Florida. The cameras activate when a vehicle runs a red light. After taking a picture, the technology superimposes data on the image, including: the time and date of the infraction, location of the intersection, speed of the car, and elapsed time between when the light turned red and when the car entered the intersection. An increasing number of South Florida communities currently have approved the use of these devices and are in various stages of implementing their respective programs. In addition, the cameras serve other public safety functions, such as criminal investigations, live viewing/incident command, accident investigations, and traffic studies.

C. LEGAL OBSERVATIONS

1. No Binding Appellate Case Law

There is no Florida appellate case law disclosed by our research which confirms that a city may - or may not - employ cameras in the monitoring of signaled intersections and prosecute persons "running red lights" for municipal code enforcement violations.

2. Concerns Raised By the Florida Attorney General

Our research has disclosed an Opinion of the Florida Attorney General that determines cities may not have authority to implement a red light camera enforcement system without authorizing state law. While an Opinion of the Attorney General construing statutory law is only advisory and is not binding legal precedent, it is highly persuasive legal authority. In AGO 2005-41, the Florida Attorney General opined that cities could use cameras to monitor (i.e. observe) red light violations, and could write a letter to a person advising him or her that his or her vehicle had run a red light. However, as to whether cities could use cameras for enforcing municipal violations of running red lights in front of a code enforcement board or special magistrate, the Attorney General stated:

"In light of the proscription contained in Section 316.007, Florida Statutes that "no local authority shall enact or enforce any ordinance of a matter covered by this chapter unless expressly authorized," this office continues to be of the opinion expressed in Attorney General Opinion 97-06 that legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices."

In 1997, the Attorney General was asked whether a county could enact an ordinance authorizing the use of unmanned cameras at traffic intersections for the purpose of issuing citations for violations of Section 316.075, Florida Statutes. The Attorney General opined that while nothing precludes the use of unmanned cameras to record violations of Section 316.075, Florida Statutes, a photographic record of a vehicle violating traffic control laws could not be used as the sole basis for issuing a state traffic citation. He further noted that an independent observation or knowledge of the infraction by the officer issuing the citation was required. The Legal Department interviewed the Assistant Attorney General who prepared the most recent Opinion on this matter. We were advised that it continues to be the Attorney General Office's view that the Legislature must adopt enabling law to authorize cities to enforce a municipal red light infraction using camera technology.

3. A Contrary Interpretation

The state regulatory scheme could be construed more broadly, so as to support a municipal red light program without the necessity of further enabling law. While Chapter 316, Florida Statutes, preempts traffic control and states that no political subdivision shall enact or enforce any ordinance on a matter covered by Chapter 316 without express authorization, local governments have been provided with certain express powers under Section 316.008, Florida Statutes. In particular, Section 316.008(1)(w) provides that local governments may regulate, restrict, or monitor traffic by security devices or personnel on public streets and highways. Although there is no appellate case law interpreting Section 316.008(1)(W), Florida Statutes, it appears to provide some basis for local governments to 'regulate traffic" with a "security device". A camera may function as a "security device" in providing a deterrent to violations within intersections, and thus securing same. Cameras have been permitted in traffic enforcement applications. The legislature has permitted camera enforcement of state law violations associated with running a tolls facility. In addition, the concept of photo enforcement of traffic laws has been legalized in Florida for local governments in connection with payment of toll at toll facilities. Florida Statutes Section 316.1001 provides a detailed citation process for alleged violators and does not require personal knowledge by an officer of a toll booth violation.

Additionally, prior proposed legislative bills, and even the current bill discussed below, contain "grandfathering" provisions. The existence of such provisions, in theory, may suggest that the "grandfathered" law is valid.

While the foregoing observations support a legal analysis contrary to the Attorney General, the Legal Department is of the considered view that a Court would likely adopt the Attorney General's Opinion unless and until state law is changed.

4. Prior Legislative Efforts

Over the past several years, legislation has been proposed to provide specific express authorization to local governments to utilized photographic traffic signal enforcement systems. Each such bill has failed to pass.

5. Resistance from Other Governmental Right of Way Owners

The Florida Department of Transportation does not allow camera devices within state right of way at State Highway System Intersections for the purpose of enforcing red light violations. A copy of correspondence from FDOT expressing the exclusion of these devices is provided in your packet, as Exhibit "A". It is the Staff's understanding that Broward County will not allow these cameras to be within County right of way. Our interviews with Aventura's legal counsel disclosed that their program covers municipal streets. Within Plantation the types of intersections that create most "red-light related" accidents are county or state intersections.

6. The Aventura Challenge

The City of Aventura has implemented a red light camera program, similar to the other surveyed municipalities, which has been legally challenged as an invalid exercise of municipal power. The lawsuit was filed on February 18, 2009 in Dade County Circuit Court (Case Number 2009-12736-CA-01). At this time, no other municipalities have been joined in the lawsuit. We are monitoring the litigation.

D. OPTIONS

Prior to engaging in the contemplated regulatory effort some risk reductions strategies the Legal Department would suggest be considered, include:

1. **Instituting a lawsuit to obtain a Declaratory Judgment** confirming whether the City has the legal authority to adopt the subject regulation and program. It may be possible to pursue such action collectively through some members of the Broward League of Cities. This would take time and would involve an expenditure of fiscal resources, but would result in a binding interpretation of law.

2. **Waiting to see if the Legislature deals with the topic**. This year, the Legislature considered Senate Bill 2004. The Bill has not passed, but due to increased support of the proposed law, the Bill was laid on the table. In parliamentary procedure, this procedure means that the Senate, in order to attend to more urgent business, laid aside the pending Bill in such a way that its consideration may be resumed at the will of the Senate as easily as if it were a new question, and in preference to new questions competing with it for consideration. A copy of most current version Senate Bill 2004 is provided in your packets, as Exhibit "B". If the program is approved, the City may want to incorporate some of the procedures contained in the Bill. The Bill's "high points" are that it:

    a. preempts the regulation and use of red light traffic enforcement cameras to the state;

    b. requires that all existing traffic infraction detectors conform to the contract specifications adopted by the Florida Department of Transportation (FDOT) by 2010;

    c. requires signs, which conform to FDOT specifications, to be posted at locations designated by the municipality providing notification that a traffic infraction detector may be in use;

    d. allows a municipality to install, maintain, and operate traffic infraction detectors on the right-of-way owned or maintained by FDOT, a county, or a municipality;

e. requires a municipality to make a public announcement and conduct a public awareness campaign of the proposed use of traffic infraction detectors at least 30 days before commencing the enforcement program;

f. establishes a fine of $150 to be assessed against the registered owner of the motor vehicle involved and states that no additional surcharge, fee, or cost may be added to the civil penalty;

g. provides that fines assessed under the program are "split", such that the enforcing city obtains a share of revenue produced.

Notably, fines assessed under ordinances existing prior to the effective date of the current proposed legislation are not grandfathered.

3. **Waiting to see if a Florida Appellate Court rules on the subjec**t, which may likely be related to the pending Aventura litigation.

4. **Proceeding now with an ordinance**. If an ordinance is desired now, we recommend that the City set the municipal penalty lower that the current $125 state infraction for running red lights (Administration suggests $100), and set the penalty available to persons who recognize their responsibility and choose to settle the matter by not contesting same at a significant discount from the $100 level (Administration suggests $50). A release and covenant not to sue will be part of the settlement of a penalty.

E. ADDITIONAL CONSIDERATIONS

Prior to the City Council deciding to move forward to develop and implement a photographic traffic signal enforcement system the following should also be considered:

1. **The improvements to public safety at intersections subject to surveillance**.

2. **The improvement to overall public safety, law enforcement capability, enhancements to traffic management, and enhancements to life rescue operations**.

3. **The relative lack of city street intersections which create significant problems within Plantation**. Of the top ten intersections with red light infractions that contributed to vehicular accidents only one (1) {Cleary Blvd. at N. Nob Hill Rd.} is at an intersection which does not involve either a state or county road. A copy of the list of the top intersections with red light infractions between May 1, 2007 and April 20, 2008 that contributed to vehicular accidents is provided in your packet, as Exhibit "C". Of the approximate 82 signaled intersections within the corporate limits of the City of Plantation, approximately only 13 are wholly under the jurisdiction of the City. Consequently, the City would likely need to engage in some level of negotiation to obtain property owner permission to place the devices outside of these 13 signaled intersections, and may risk unknown repercussions from the state and county for deploying these devices for these intersections, given Staff's understanding that these right of way owners to not wish their intersected right of way areas to be subject to this type of red light enforcement without additional state authorization. A copy of a draft inventory of all signalized intersections within the corporate limits of the City of Plantation is provided in your packet, as Exhibit "D".

4. **The desired procurement process for this technology**. The Administration would recommend following the Request for Competitive Proposal Procurement model.

5. **Any desired modifications to the proposed contract to be used in the solicitation process**.

    a. The City's Police Advisor has reviewed the Agreements between the Cities of Pembroke Pines and Aventura with American Traffic Solutions. One interesting difference is the Pembroke Pines clause which provides for 1% payment to Pembroke Pines when other agencies piggyback their Agreement for the initial term of the contract. Vendor compensation was the same in both agreements for the per camera paid notices. Both agreements provided as follows:

        i. 1st tier: First two paid notices per day in a month, per camera @ $47.50;

        ii. 2nd tier: Next two paid notices per day in a month, per camera @ $27.50; and

        iii. 3rd tier: All other paid notices in a month, per camera @ $17.50.

    The collection services from Vendor, the methods of collection and compensation are to be determined in the contract. A copy of the specimen agreement for Aventura is provided in your packet as Exhibit "E".

    b. legal department would suggest the following be considered as part of any contract:

        i. The Vendor indemnity should be "beefed up" to include reimbursing the City for any attorneys fees it incurs in defense of litigation which challenges the validity of the City's enabling ordinance or the contract or the program.

        ii. The indemnity must be financially assured by either a letter of credit, escrow deposit, guarantee, or other external assurance if ever the Vendor's required internal capital requirements are not maintained.

        iii. In the event subsequent legislation makes the Vendor's equipment not comply with all legal requirements, the Vendor should agree either to supply same at no cost to Plantation, or offer to release Plantation from the contract.

6. **Whether the funds resulting from the enforcement of these violations will be kept in a separate account for some time period, and not used by the City for current operations purposes (i.e. be used for increasing reserves) until the legal environment becomes cleaner**. In the event the City were to enact a law and begin to collect code enforcement fines for violators, the City would risk having its ordinance determined invalid and having to return all of the money it collected pursuant to the program.

F. RECOMMENDATION

Press reports suggest a strong likelihood that the legislation will enact a Bill very soon that removes any legal uncertainty over municipal programs. A recent report is included as Exhibit "F". This legislation will also allow state and county intersections to become subject to a municipal enforcement effort, and as stated above, in Plantation these are the intersections which create the most significant regulatory concerns. The Administration recognizes that it will take time to go through a competitive procurement and advertise an ordinance, and wishes the Council to authorize these now so that these matters may be concluded around the time the State hopefully adopts legislation or a preliminary decision is reached in the Aventura case.

G. CONCLUSION

The Staff is requesting direction on whether and how to proceed to implement photographic traffic signal enforcement system. If the Council wishes to advance this project, a Code amendment would be necessary. We have prepared a draft Ordinance which is attached for your ready reference as Exhibit "G". The Waiver and Release is included as Exhibit "A" to the draft Ordinance.

Discussion is desired.

Attorney Lunny explained the Attorney General of Florida has indicated that legislation is being required. There is a way to read the law around that view; however, that view has risks. The legal landscape is not certain and on the State level they are saying a State law is necessary. Factually most of the problem intersections in Plantation happen to be State and County intersections because those are the large ones. The County and State have both indicated they do not want these devices at those intersections. There are some legal options available. In order to be most conservative we can issue a declaratory judgment and attempt to get adjudication on whether, under Florida's legal scheme, this would stand. He does not recommend this because Aventura is already litigating that. The other option would be to implement or start implementing the program. He has heard this legislation will come back and be adopted. He requested direction from City Council as to whether a lawsuit should be filed, which he is not recommending, to request an Attorney General's opinion, which will probably not be positive, do nothing, which he has been advocating or start the process and hope that Aventura gets a ruling. If the Council really wants to pursue this he feels the process should be begin, starting with advertising an ordinance and seeking bids from bidders who are still willing to work in this environment. This does have legal concerns, which he hoped would be resolved but have not been as of this time.

In response to Councilwoman Uria, Attorney Lunny advised this has risks, there are steps that can be taken to mitigate the risk, which has been suggested, but he feels the better view of the law is what the Attorney General is saying. He believes when the State and County act it will not be a significant revenue to our City because those are their intersections.

Councilwoman Uria commented that when this was previously discussed she was for the red light cameras, not for revenue but for safety. With this information she feels it would probably be best to sit tight.

Mayor Armstrong believes this topic will be back.

Councilman Levy indicated the only thing he is hearing from Attorney Lunny is that we are keeping our options open by filing something that grandfathers us in in case someone wants to layer more autocracy on top of us.

This gives us the option of deciding where we go. If nothing is done we have no option in the future. He is in favor of watching what the other cities experiences are prior to doing anything.

Attorney Lunny advised we had the same strategy when many of the cities adopted a non ad valorum assessment for EMS only service and that was stricken by the Florida Supreme Court while we decided not to do it and then there was significant litigation on how to pay it back, etc. He is expressing caution but is willing to get the ball rolling.

Mayor Armstrong wanted to get a sense from the Council as to what direction to take.

Councilman Tingom concurred with Councilwoman Uria and believes there is something to explore. Safety is the primary issue and revenue in these times would be very good. The cameras do caution people as they are running the red lights and he would be in favor of us setting ourselves up. He did not know if something could be in place so we could get a cut if the County or the State installed the lights on the State and County roads. He is in favor of moving forward with setting up.

Attorney Lunny advised as Dr. Levy was intimating, if this is a City ordinance the City is in the driver's seat in terms of how the cuts go until it is pre-empted. There are ways to read Florida's law to support this; however, it is not as conclusive as it should be.

In response to Councilwoman Bendekovic, Councilwoman Uria is in favor of very cautiously moving forward.

Councilman Fadgen noted the largest benefit he sees is public safety and perhaps some revenue. He would like to proceed but questioned why the County will get the entire cut if we are doing all of the enforcement.

Councilwoman Bendekovic indicated there is a consensus to proceed with caution.

Deputy Chief Harrison explained in addition to the red light camera system there are other measures that can be used for investigative purposes. There is a 24 hour, seven days a week, 365 days screening video that records and takes photographs of the violations. The investigative standpoint is also a very good tool. A lot of the companies will absorb all of the costs for the installation and maintenance of the equipment.

Mr. Quatera of American Traffic Solutions was present.

In response to Councilman Fadgen, Mr. Quatera advised that Attorney Lunny is correct; there are many different jurisdictions moving forward cautiously. He believes there have been two opinions; one that says do not do it, which was written in 1997. The one written by Governor Crist in 2005 stated there has to be personal knowledge and that is what gave rise to the camera companies. Now a police officer can look at a series of photographs and gain the personal knowledge and that is why so many communities within the State are moving forward. His company takes the highest pole and highest resolution camera. As long as the vendor can find a footprint that is not on State right-of-way, that is how they have been successful throughout the State. The contractors look for a longer contract; a five-year contract, and they give the major share of the revenue back to the jurisdiction because they know that will withstand the public and media test.

Mayor Armstrong commented that there is a direction to move forward cautiously.

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25. DISCUSSION CONCERNING AUTHORIZED VARIATIONS FOR FENCES AND WALLS.

A memorandum dated March 27, 2009 to Mayor and Members of City Council from Donald J. Lunny, Esquire, City Attorney follows:

The Council has, on several occasions, reviewed the topic of allowing a uniformed perimeter wall for the portion of Nob Hill Estates adjacent to Nob Hill Road. When this item was last considered by the Council, direction was given to Staff to prepare an amendatory Ordinance to the City's land development regulations for fences and walls, which would authorize variations to the standards by resolution. In particular, the resolution would indicate the type of wall or fence allowed for the area. Importantly, the primary thrust of the regulation was to establish flexibility for the standards applicable to fences and walls which are not established by virtue of Site Plan Approvals.

Attached is an Ordinance which permits authorized variations. The process will allow the Director of Planning, Zoning, and Economic Development to initiate an application. If a neighborhood is governed by an association, then the association can make the application; however, if there is no association, an application can be made by a resident. As was discussed, the Council will be able to establish a uniform fence or wall standard for any given multi-family residential property or single-family residential property by advertising and adopting a resolution.

The Council has expended considerable time and effort in formulating a standard fence or wall appropriate for the residents of Nob Hill Estates which abut Nob Hill Road. It is Staff's understanding that this wall will also be acceptable to the Council for other neighborhoods adjacent to expressways, arterials or collectors. Accordingly, attached to this Memorandum is also a draft Resolution approving the uniform wall standard which will apply not only in for the Nob Hill Estates neighborhood, but for any other neighborhood building sites along these roads. Exhibit "B" to the Resolution establishes the wall standard. The Resolution indicates that the new wall must be made of cement or masonry, and will be the only type of wall allowed when a property owner wishes to erect a new wall. This means that is the property owner wishes to erect a chain link or wood fence, the new standard would not apply. The Resolution also indicates that in the event an existing masonry is damaged to an extent less than 50% of its surface area, it can be repaired or fixed without complying with the new standard.

Hopefully, with this Ordinance and the proposed Resolution, a uniform standard will apply for all property not covered by Site Plan Approval on any of the City's major streets, and additionally, a procedure is in place for other residential neighborhoods who wish to propose a "neighborhood choice" type of fencing in the future different from the ordained standard in areas not covered by the variation.

Direction is requested to advertise the Ordinance and Resolution.

Attorney Lunny explained there are two different features. They have proposed to write the regulation along the lines discussed so that a neighborhood can come in and petition for a certain type of wall when there is no site plan. He distributed a colored map and noted that a design was approved for the Nob Hill Road, which is attached. There would be a companion resolution that would allow that wall and landscaping on any principal or arterial, minor arterial or collector roadways, which are shown in the exhibit by color. The only exception is NW 8th Street in Plantation Acres. Between the ordinance and the resolution a neighborhood is established and also a standard upfront for anybody to use that is not site plan approved. Administration would be able to approve those that would be similar to the Nob Hill Road.

Councilwoman Bendekovic noted some of the backyards are so short that when the five-foot setback is done it is too far. She questioned whether a three-foot could be done instead so there would be uniformity.

Attorney Lunny advised the direction given was to put it on the property line and let people install as they wish to install walls and let anyone that is currently a six go to eight.

Councilwoman Bendekovic had contact with Mr. Berkman, who said they are going to work together with a landscaping group to landscape that area and maintain landscaping on the other side of the wall.

Attorney Lunny referenced a drawing by Jeffrey Siegel, City Landscape Architect, which is probably two or three feet off with some landscaping. This would be a uniform standard. If the neighborhood still wanted to come in and have a neighbor choice there would be flexibility.

In response to Attorney Lunny, Councilwoman Bendekovic noted there is a consensus to advertise.

* * * * *

Meeting adjourned at 11:26 p.m.

_____
Diane Veltri Bendekovic, President
City Council

ATTEST:

_____
Susan Slattery
City Clerk

RECORD ENTRY:

I HEREBY CERTIFY that the Original of the foregoing signed document was received by the Office of the City Clerk and entered into the Public Record this _____ day of _____, 2009.

_____
Susan Slattery, City Clerk