

**MEETING OF THE CITY COUNCIL
PLANTATION, FLORIDA**

December 16, 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 Tingom.

3. The minutes of the City Council meeting for September 30, 2009 were approved as presented.

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Councilwoman Bendekovic introduced students from the Nova High American Government class were introduced and the meeting procedures were explained.

ITEMS SUBMITTED BY THE MAYOR

Mayor Armstrong presented Service Awards to the following employees:

Terri Harris	Police	20 years
Kathleen Andrews	Police	10 years
Susan Back	Police	10 years
Ashley Dunham	Fire/Rescue	10 years
Patricia Sonnelitter	Landscape	10 years
Officer Michael Zellar	Police	10 years

Congratulations were offered.

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Mayor Armstrong introduced Elke Kurtz of the Plantation Woman's Club.

Ms. Kurtz presented three checks to Chief Harrison; \$500 for the Binky Patrol; \$1,754 for a bike suit, and \$2,000 for the bike program. She then presented three checks; \$500 for two couches, \$1,600 for folding chairs at Deicke Auditorium, and \$5,000 towards Plantation Woods.

Mayor Armstrong thanked Ms. Kurtz and the Plantation Woman's Clubs for all their initiatives and efforts on behalf of projects in the City of Plantation.

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Mayor Armstrong announced that Santa Claus comes to Plantation through the efforts of the Parks and Recreation Department on Christmas Eve. This has been an ongoing tradition since 1963.

Mr. Romano advised that everyone will meet at Plantation Central Park at 4:00 p.m. on December 24, 2009 and the program will run until 10:00 p.m.

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Mayor Armstrong announced that the Plantation Historical Museum is celebrating Winter Wonderland. Open House is on Thursday, December 17, 2009 and the Bell Ringer Choir from the Plantation Methodist Church will be present between 6:30 p.m. and 8:30 p.m. and on Saturday, December 19, 2009, Santa and his elves will be greeting the children between 10:00 a.m. and 3:00 pm.

Councilwoman Bendekovic advised that since the Winter Wonderland has been open the museum has had close to 1,000 visitors. During the entire six weeks, over 4,000 people are expected to go through the museum. She thanked staff and all of the volunteers.

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Mayor Armstrong mentioned the 2010 U.S. Census. According to the U.S. Census Bureau, the undercounting of Florida residents directly impacted more than \$500,000,000 in Federal funds coming into the State, counties and municipalities over the past ten years. It is important that all of the residents in the City of Plantation are counted so that we have an opportunity to share in these funds as they become available over the next ten years. This is being done on a one by one basis, encouraging all of our residents to check with their neighbors and be sure that they received the Census information and that they filled it out and returned it.

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CONSENT AGENDA

Items #11, #12, and #17 were removed from the Consent Agenda for further discussion. Mr. Lunny advised that also pulled were Administrative Items #27 and #28 and Legislative Items #30 and #31.

As a Commissioner of the CRA, Mayor Armstrong has a voting privilege on Items #23 & #26. Mr. Lunny read the Consent Agenda by title.

NOTE: Items #11, #12 and #17 were heard in tandem.

4. Approve Westside Regional Medical Center garage sale in their parking lot on Saturday, January 23, 2010 from 8:00 a.m. – 12:00 p.m. to help benefit the American Heart Association.
5. Request for authorization to approve a purchase order in favor of Reynolds Inliner, LLC., not to exceed \$28,500 for the in-place lining of approximately 855 feet of 8” gravity sewer main on NW 15th Street in the Lift Station 73 basin. (Budgeted – Utilities)
6. Request for authorization to purchase Hydrofluosilicic Acid (Fluoride) from Harcross Chemicals, Inc. using the Southeast Florida Co-Operative bid #403-10368 from March 1, 2010 through February 28, 2011 for \$0.3475/per pound (full truckloads) or \$0.75/per pound (less than full). (Budgeted – Utilities)
7. Request for authorization to award a contract to Tran Construction, Inc. for the Plantation Park, Phase E Water Main Replacement project in the amount of \$1,164,205.81 (Budgeted – Utilities & SRF Funding), such contract not being affected until the State Grant; therefor, has been procured and the Agreement has been signed by the Mayor.
8. Approve settlement agreement for general employee back pay for overtime.
9. Approve Change Order No. 4 in the amount of \$53,793 to Signature Design Paving Corporation for brick pavers at Plantation Woods at Kennedy Community Center.
10. Approve yearly maintenance for the City’s Cisco network infrastructure in the amount of \$33,711.59 from the Insight Public Sector. (Budgeted – IT)

Ordinance No. 2433

13. Second and final public hearing of an ORDINANCE pertaining to the subject of Code Enforcement; establishing supplemental Code Enforcement procedures; providing for civil violation tickets; providing for a schedule of civil penalties and fines; providing for rights of violators; providing a savings clause; and providing an effective date therefor.

Resolution No. 10767

14. RESOLUTION confirming a Plantation City Lien of Utilities Service Charges for 4876 NW 1st Street. (Eubanks)

Resolution No. 10768

15. RESOLUTION confirming a Plantation City Lien of Utilities Service Charges for 8136 NW 17th Manor. (Schwartz)

Resolution No. 10769

16. RESOLUTION confirming a Plantation City Lien of Utilities Service Charges for 855 NW 80th Way. (McKenzie)

Resolution No. 10770

18. RESOLUTION to accept a Florida Recreation Trails Program Grant.

Resolution No. 10771

19. RESOLUTION approving that certain three (3) year agreement for Long Term Disability (LTD) Employee Assistance Program. (EAP).

Resolution No. 10772

20. RESOLUTION approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period November 24 – December 2, 2009 for the Plantation Gateway Development District.

Resolution No. 10773

21. RESOLUTION approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period November 24 – December 2, 2009 for the Plantation Midtown Development District.

Resolution No. 10774

22. RESOLUTION approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period November 24 – December 2, 2009.

Resolution No. 10775

23. RESOLUTION approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period November 24 – December 2, 2009 for the City of Plantation's Community Redevelopment Agency.

Resolution No. 10776

24. RESOLUTION approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period December 3 – December 9, 2009 for the Plantation Gateway Development District.

Resolution No. 10777

25. RESOLUTION approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period December 3 – December 9, 2009.

Resolution No. 10778

26. RESOLUTION approving the expenditures and appropriations reflected in the Weekly Expenditure Report for the period December 3 – December 9, 2009 for the City of Plantation's Community Redevelopment Agency.

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

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic

Nays: None

NOTE: Mayor Armstrong voted affirmatively on Items #23 and #26.

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Mr. Lunny read Consent Agenda Items #11, #12 and #17.

11. Award bid for Broward Boulevard bus shelters to lowest qualified bidder, J A & M Development Corp. in the amount of \$212,275.

A memorandum dated December 10, 2009 to Mayor Armstrong and City Council Members from Juan Jose Figueroa, Engineer II, follows:

SUBJECT: Bid award recommendation to JA&M Developing Corporation, in the amount of \$212,275.00 for the Broward Boulevard Bus Shelters Improvements, City Project No. 04-08.

The subject project involves the construction of nine (9) bus shelters along Broward Boulevard, between University Drive and State Road 7, per the plans prepared by C3TS, PA. Funding for this project is through a federal grant managed through the Florida Department of Transportation’s Local Agency Program, and through the Road and Traffic Fund. The project was advertised as a Request for Sealed Proposals (RFP) and on December 8, 2009, the City received six bid proposals. The numerical results are as follows:

1.	Green Construction Technologies.....	\$205,810.00
2.	JA&M Developing Corp.....	\$212,275.00
3.	JMW Construction Corp.....	\$247,100.00
4.	West Construction.....	\$250,600.75
5.	State Contracting & Engineering Corp.....	\$406,000.00
6.	Williams Paving Co., Inc.....	\$573,000.00

After careful review of the bid proposal submitted by the apparent low bidder, Green Construction Technologies, out of Wilton Manors, Florida; staff concluded that the apparent low bidder failed to demonstrate requisite experience on projects of similar scope as required by the bid documents. Consequently, staff has determined that the apparent low bidder is not qualified to perform the scope of work required in the bid documents and their bid proposal has been disqualified. Upon careful review of the second lowest bidder, JA& M Developing Corporation, out of Miami Lakes, Florida, staff has determined that the bidder is qualified to perform the scope of work required in the bid documents and the proposal is responsive and responsible.

Therefore, staff recommends the award of a contract in the amount of \$212,275.00 to the lowest qualified bidder, JA&M Developing Corporation, for the subject project. Should you have any questions, please do not hesitate to contact me.

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12. Award bid for University Drive bus shelters to lowest qualified bidder, J A & M Developing Corp, in the amount of \$232,917.

A memorandum dated December 10, 2009 to Mayor Armstrong and City Council Members from Juan Jose Figueroa, Engineer II, follows:

SUBJECT: Bid award recommendation to JA&M Developing Corporation, in the amount of \$232,917.00 for the Broward Boulevard Bus Shelters Improvements, City Project No. 04-05.

The subject project involves the construction of ten (10) bus shelters along University Drive, between I-595 and Sunrise Boulevard, per the plans prepared by C3TS, PA. Funding for this project is through a federal grant managed through the Florida Department of Transportation’s Local Agency Program, and through the Plantation Midtown District. The project was advertised as a Request for Sealed Proposals (RFP) and on December 8, 2009 the City received seven bid proposals. The numerical results are as follows:

1.	Green Construction Technologies.....	\$225,900.00
2.	JA&M Developing Corp.....	\$232,917.00
3.	JMW Construction Corp.....	\$271,100.00
4.	West Construction.....	\$294,747.50
5.	ENCO, LLC.....	\$300,086.32
6.	State Contracting & Engineering Corp.....	\$443,000.00
7.	Williams Paving Co., Inc.....	\$540,000.00

After careful review of the bid proposal submitted by the apparent low bidder, Green Construction Technologies, out of Wilton Manors, Florida; staff concluded that the apparent low bidder failed to demonstrate requisite experience on projects of similar scope as required by the bid documents. Consequently, staff has determined that the apparent low bidder is not qualified to perform the scope of work required in the bid documents and their bid proposal has been disqualified. Upon careful review of the second lowest bidder, JA& M Developing Corporation, out of Miami Lakes, Florida, staff has determined that the bidder is qualified to perform the scope of work required in the bid documents and the proposal is responsive and responsible.

Therefore, staff recommends the aware of a contract in the amount of \$232,917.00 to the lowest qualified bidder, JA&M Developing Corporation, for the subject project. Should you have any questions, please do not hesitate to contact me.

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17. RESOLUTION approving that certain agreement for placement of bus shelters within City limits between the City of Plantation and Clear Channel Outdoor, Inc.; having the appropriate City Officials execute same and authorizing the city Administration or City Attorney to make minor revisions thereto; and providing an effective date therefor.

Councilwoman Bendekovic’s concern is how this will impact the Plantation Woman’s Club. She questioned whether this would have an impact on the bus benches that they have a contract for.

Mr. Butler’s understanding was that Administration has already had that discussion with the vender and if there are, in fact, stops affected, the existing bus bench would be removed and replaced with a shelter.

Mayor Armstrong advised when the bus bench contract was done it was with the understanding that as we came in with permanent shelters they would be placed in lieu of the bus bench if there was a conflict. At the same time that was done, a significantly large number of additional benches were installed at other locations that did not previously have benches because of the expanded program and the number of stops that BCT is currently making on University Drive and throughout the City as a whole. Some of the locations can or will accommodate both; however, the shelter itself is an entirely different kind of opportunity for transit users to have shelter and cover to be protected from the sun and it provides some street furniture in lieu of bus benches. When the contract was negotiated there was not a revenue loss; there was still a revenue gain because of the number of benches that were being placed. They are making a significantly larger amount of money on the bus benches today than what they have in the most recent two or three years.

Councilman Fadgen suggested deferring this item until the impact is known.

Councilwoman Uria referenced Item #17, the bus shelter agreement, and questioned how that affects Items #11 and #12 and whether it is an extension.

Mayor Armstrong advised there are two grants in the City as far as the bus benches and bus shelters. The bus shelters are those that have been in place throughout the City probably since the 1980's. Some of those locations do not have signage. The agreement is the same; that as Midtown begins to identify additional locations for bus stops and benches or placement and funding for shelters that they will also be replaced in the same way.

Mr. Butler commented that the two projects for bid award recommendations will not impact the Clear Channel locations; there are no conflicts with the Clear Channel locations.

Mr. Lunny indicated that the bus shelter program is separate from the Woman's Bus Bench franchise and has been for some number of years. There has never been a Woman's Club franchise for the bus shelters; they are completely different.

In response to Councilwoman Uria, Mayor Armstrong advised Mr. Flutie does not represent Clear Channel, he did at one time but he does not currently. Clear Channel is different; the bus benches are all Mr. Fluties.

Councilwoman Uria received a telephone call from Mr. Flutie and he commented that he could help us get a better rate with Clear Channel and she questioned whether this should be investigated.

Mr. Keefe advised that nine shelters are operated by Clear Channel and the approximate revenue is about \$1,300 annually per shelter if they are advertising; if they are not advertising each quarter then the amount is reduced, as per the Agreement. One of the bus benches had to be removed near Broward Boulevard and University Drive because it had to have a new platform for ADA compliance. Mr. Flutie saw that the bus bench was gone and put a bus bench there; however, he was told that he did not have authority to put a bench at that location. Mr. Flutie was aware of that and removed it right away; he was very cooperative. There was no conversation about any better rates. Mr. Keefe believes the rate from Clear Channel is fair; it has increased 5% each year since the contract has been in place and it continues to do so in the proposed Agreement.

In response to Councilwoman Uria, Mr. Keefe stated that Clear Channel did not request a renewal of their agreement, which had expired, even though they continued to maintain the shelters in accordance with the agreement. There is no time frame. Mr. Flutie had an opportunity to discuss the rates and never did.

Councilwoman Uria would like to have more information on Items #11 and #12.

In response to Mayor Armstrong, Mr. Butler advised there is a degree of time sensitivity because this is a federally funded project. He stands behind the recommendations and noted that this project needs to move forward.

In response to Councilman Fadgen, Mayor Armstrong indicated there is no advertising associated with the bus shelters. These are the shelters that are typical to those on State Road 7; they are the same design and same brick construction.

Motion by Councilman Fadgen, seconded by Councilwoman Uria, to defer Items #11, #12 and #17 until January 6, 2010. Motion carried on the following roll call vote:

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

Mayor Armstrong clarified what information was requested by Council.

Councilwoman Bendekovic stated that she would like to know the revenue generated and lost. She also questioned whether there could be a discussion with Mr. Flutie.

In response to Councilman Fadgen, Mayor Armstrong advised that maintenance issues with Clear Channel were investigated with Mr. DeCelles, who manages the program with Clear Channel. They were of the opinion that the Clear Channel has been very responsive when receiving calls of vandalism.

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ADMINISTRATIVE ITEMS

- 27. RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF PLANTATION AS EMPLOYER AND THE FLORIDA STATE LODGE FRATERNAL ORDER OF POLICE BARGAINING AGENT FOR PLANTATION POLICE DEPARTMENT FOR FISCAL YEARS 2009/2010, 2010/2011, AND 2011/2012.

This item was removed from the agenda.

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- 28. RESOLUTION APPROVING THE FORM AND CONTENT OF REVISIONS TO THE CITY OF PLANTATION POLICE OFFICERS' DEFERRED RETIREMENT PLAN (DROP); PROVIDING A SAVINGS CLAUSE; AND OTHERWISE PROVIDING AN EFFECTIVE DATE THEREFOR.

This item was removed from the agenda.

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Resolution No. 10779

- 29. RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF PLANTATION AND THE PLANTATION ATHLETIC LEAGUE, INC.; PROVIDING FINDINGS; DIRECTING THAT THE APPROPRIATE CITY OFFICERS AND EMPLOYEES EXECUTE THE AGREEMENT; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE THEREFOR.

Mayor Armstrong acknowledged Councilman Tingom and others that have been such an intricate part of this Agreement.

Councilman Tingom recognized Bob Horland, Guy Strom, and Paul Schneider. He also thanked City staff, Dan Keefe, Jim Romano and Sam Metott. He commented that it was a pleasure to work with the men and women who are dedicating their time to the Youth Athletics in Plantation. The contract was approved by the PAL Board on December 15, 2009. As a cautionary note, Youth Athletics involves passion and emotion.

Councilman Fadgen commented that there will be more challenges in any dynamic organization while moving forward and that is to be expected. He believes this will improve the situation and make it a good foundation. He referenced a comment previously made by Councilwoman Uria; that new statements be highlighted and noted that it would have been better if the changes would have been highlighted.

Councilwoman Uria learned more about PAL while attending the meetings and commented that Mr. Metott is a wealth of knowledge.

In response to Councilwoman Uria, Mr. Lunny advised that the travel program, #2, Page 9, should be 50%, not 60%.

Councilman Tingom indicated that this was a topic of discussion at the last meeting and the concern was that Plantation residents get the first try at things. In looking at the programs from a Countywide and Statewide basis, people tend to move minor recruiting from area to area and it was agreed that this was the best way to give Plantation residents every possible opportunity as well as to make the program competitive.

Mr. Lunny commented that there is an Administrative Review Panel, which reviews suspensions. The discussion concerns how the panel is constituted. Under the Agreement as proposed, the PAL Sports Commissioner would have to agree to facilitate the review and appoint two people, then it would become the duty of the Parks and Recreation Advisory Board to appoint two people to the panel and if it failed to do so, the Council would appoint two people to the panel and those four would agree. Under no circumstances would a City employee or elected officer serve on this panel. They were trying to give the City and Sports Commissioner an opportunity to select people to this panel who would be perceived as fair and impartial.

Councilman Fadgen felt it would be better to have more than fewer making a decision.

Councilman Tingom was under the impression that it was three people because that way there is equal representation.

Councilwoman Uria was willing to go along with whatever is suggested by the Task Force.

Mr. Lunny stated that this was discussed for about 40 minutes and they were trying to come up with something that was perceived as fair in terms of not returning it to Council and having the Advisory Board charged with the general supervision of all recreation functions.

Councilwoman Bendekovic recommended that the suggestion be presented to the Board.

In response to Councilman Levy, Guy Strom, Treasurer, advised that this number came out of a meeting. He would not want to hold up the contract because of this.

Mr. Lunny advised that five people are typical but there was no conscience decision not to do three or seven.

Motion by Councilman Tingom, seconded by Councilman Levy, to approve Resolution No. 10779. Motion carried on the following roll call vote:

Ayes: Fadgen, Levy, Tingom, Uria, Bendekovic

Nays: None

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LEGISLATIVE ITEMS

30. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE TO ALLOW FOR THE PURCHASE OF CREDITED SERVICE FOR TIME SERVED IN THE MILITARY.

This item was removed from the agenda.

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31. PUBLIC HEARING AND FIRST READING OF AN ORDINANCE TO DELETE THE REQUIREMENT THAT DISABILITY RETIRANT CONVERT THEIR BENEFIT TO A NORMAL RETIREMENT BENEFIT UPON NORMAL RETIREMENT ELIGIBILITY.

This item was removed from the agenda.

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QUASI-JUDICIAL CONSENT AGENDA – None.

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QUASI-JUDICIAL ITEMS

32. APPROVE SITE PLAN MODIFICATION FOR INERJY ECOVERT P2 PROTOTYPE WIND TURBINE LOCATED ON THE NORTHEAST CORNER OF NW 69TH AVENUE AND SUNRISE BOULEVARD.

Planning and Zoning staff comments are as follows:

REQUEST: Consideration of a request for site plan modification approval to install a wind turbine.

EXHIBITS TO BE INCLUDED: Planning and Zoning Division report; subject site map; and site plan application.

ANALYSIS:

The subject property is zoned I-LP, contains approximately 3.2 acres, and is developed with a 76,200-square-foot research and development building.

The applicant is requesting site plan modification approval to construct a 135-foot tall vertical-axis direct-drive wind turbine. The Ecovert P2 wind turbine is a prototype turbine that will be utilized for testing and monitoring. The applicant has indicated the wind turbine should produce approximately 50,000 kwh clear energy annually. The energy produced from the wind turbine will be utilized by the owners' research and development/manufacturing building.

STAFF COMMENTS:

PLANNING AND ZONING:

1. If the wind turbine is non-functional or abandoned for a continuous 12-month period, the wind turbine shall be removed.
2. Noise levels shall not exceed the levels contained in Chapter 16 of the Code.
3. No lighting or signage should be affixed to the wind turbine except as required by the FAA.
4. No exterior illumination intended to light up the wind turbine at night such as ground, pole and wall mounted lighting.
5. Indicate the color of the wind turbine. Staff recommends a non-reflective, non-obtrusive color such as very light gray or white.

ENGINEERING DEPARTMENT:

1. Please provide the Type "D" curb detail.
2. Please provide dimensions for the tower base that is shown in the grass area. Also please provide all dimensions from the curb to the base as well as to the steel barrier tube.
3. The foundation plans will need to be signed and sealed by a structural engineer registered in the State of Florida.

Permit Comments:

An engineering permit will be required for the curb work.

Note: A detailed review of the civil drawings has not been performed at this time. If the site plan application is approved by City Council, a thorough engineering review will be performed at the time of application for construction permits. Surface water management permit(s) through Old Plantation Water Control District (OPWCD) and/or SFWMD may be required and a copy(s) provided to the Engineering Department at the time of permit review. The application will be required to execute a developer agreement and post security for all engineering and landscape related improvements at the time of permitting.

LANDSCAPE ARCHITECTURE: No objections; however, please address the following items as discussed at pre-development.

1. Please submit landscape plans showing existing trees, palms, hedge, and ground cover in the immediate vicinity and their disposition.
2. Please submit landscape plans for the proposed wind turbine; include proposed locations, species (trees, palms, shrubs, ground cover, etc.), specifications, etc. on plans.

BUILDING DEPARTMENT: No objections.

FIRE DEPARTMENT: Need access to shut-offs.

POLICE DEPARTMENT: This project will have little or no impact on police services.

UTILITIES: The following comments apply to the site plan.

1. Water and Sewer Utility Plans were not provided with this submission.
2. Prior to a Building permit being issued, the following must be provided.
 - Water and Sewer Utility plans must be submitted to the Utilities Department for review and approval.
 - BCHD and BC EPD permits must be approved.
 - Utilities Agreement must be executed.

- Utilities Performance Bond must be posted.
 - Utility Easements must be executed.
 - Utility Inspection fees must be paid.
 - Capacity Charges must be paid in FULL.
 - Contact Danny Pollio if you have any questions, 954-797-2159.
3. A pre-design meeting is required with the Utilities Department.
 4. Show all new and existing water and sewer lines and easements on landscaping and drainage plan.
 5. Maintain all utilities and utilities easements for water and wastewater system access.
 6. No construction, anchoring systems or guy wires allowed in Utilities easements.

The applicant, Jamie Schlinkmann, was present and provided a brief Power Point presentation.

Mr. Leeds provided a City presentation and noted that the wind turbine is approximately 34 feet in diameter and is a permitted use in the Technology Park. While it is shorter than some cell towers, it will have a wider view at certain locations where the wind will turn. Conditions are included in the backup material; one of the conditions is a provision in the Zoning Code that was extended and says, "If any business or any operation in the City is abandoned for a continuous six-month period the operation shall be deemed abandoned and removed." The applicant is being given 12 months and if the wind turbine is non-functional or abandoned for a continuous 12-month period the turbine shall be removed. This is to insure that in an abundance of caution that if things do not work out the turbine will not sit there forever. The comment is not negative and staff is very excited about this.

In response to Councilwoman Uria, Mr. Schlinkmann indicated that the wind turbine was not located further in the rear of the property due to the fact it would get much closer to the power lines. The turbine will be a dull silver color with non-reflective white blades. The entire plan is to commercialize the product. He commented that Austin, Texas plans to be the most energy efficient city in the United States by the year 2015.

Councilman Fadgen questioned what would happen to any surplus power generated.

Mr. Schlinkmann stated this is a behind the meter application. They do not anticipate producing more power than their facility consumes because their facility consumes a lot of power. If that should happen, according to the net meter laws, they are allowed to let their meter run backwards and offset paying their electricity costs and let it flow directly into the grid and then once more is used the meter would run forward and net out. They would essentially get paid retail for every penny of power produced by the machine. The tower is much smaller than the radio tower a block away. During hurricanes the blades would lock completely parallel to each other and the entire rotor would be allowed to point itself into the wind, which gives it a much lower drag than a traditional type of turbine that has to park in a very fixed position and hold itself with whatever is happening with the wind. The target installed cost of this machine is \$800,000. It was noted that this machine would produce approximately \$100,000 of electricity annually. The construction of the tower will require a permit.

In response to Councilman Levy, Mr. Schlinkmann advised that the majority of the traditional wind turbines are primarily composed of steel and painted steel. This machine is being constructed almost entirely out of aluminum, which does a much better job of surviving a salty atmosphere. Structural corrosion is very long term in aluminum; most of the corrosion is a light surface corrosion, it is not like steel. Friction is dealt with by sizing and having the correct bearings for all of the motions occurring in the machine. It is their intent to have the machine completely grease lubricated and have no oil because they do not want the environmental impacts of oil.

Mayor Armstrong questioned whether any of the sites in Key West are ready for installation or whether this will be prototype.

Mr. Schlinkmann stated this will be a prototype and this will be a machine used to develop software and other things. Their target installation date for the first full size demonstration machine in the Keys will be in the beginning of 2011.

In response to Councilman Tingom, Mr. Schlinkmann advised that metal fatigue is a large part of the problem. The fatigue on the vertical machine is dramatically different because there is a large centripetal portion of the load that does not oscillate like it would on a traditional type propeller type turbine. The machine should last at least 30 years.

Motion by Councilwoman Uria, seconded by Councilman Fadgen, to approve the site plan for INERJY ECO VERT P2 PROTOTYPE WIND TURBINE, located on the northeast corner of NW 69th Avenue and Sunrise Boulevard, subject to staff comments. Motion carried on the following roll call vote:

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

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COUNCILMEMBERS' COMMENTS

Mayor Armstrong announced that the next Council meeting will be on January 6, 2010. She wished everyone a Merry Christmas, a Happy Hanukah, and a joyous season with whatever form celebrated.

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Mayor Armstrong commented on the nativity scene and cleared up some misrepresentations in Mr. Torres' memo. There has been a nativity scene in the lobby at Plantation City Hall for the last five or six years. A comment was made about removing nativity scenes and to the best of her knowledge, a nativity scene has never been removed from the City of Plantation or directed to be removed because there were none that were previously placed at any of our outside locations. She expressed concern about the misrepresentation of what has been this City's policy for as long as she has been involved. With regard to the comment about our City Attorney, Donald Lunny, making false statements, she stated that he explained the implications of a public forum and exactly what the Council's options are should they want to consider placing a nativity or any other scene at any of our City locations. Mr. Lunny is one of the most knowledgeable and confident attorneys that has ever given advice in the City and she finds it difficult to think that he would have intentionally given any kind of a false statement. Mayor Armstrong met with Mr. Torres in order to discuss the placement for a nativity scene and believes at that time it was a matter of fire stations or Fire Station #1 and the initial conversation did not and still does not appear to be an appropriate location for a display of any kind. She offered an opportunity to Mr. Torres to check with residences and churches along Broward Boulevard and other locations within the City; however, there was no response or an interest in taking advantage or to look for any other location other than Fire Station #1. For that reason, when this was brought to the City Council, the City Council again looked at fire stations and police stations as being appropriate or inappropriate locations and found that, because of safety reasons and other things, that those locations are not appropriate for displays of any kind. She is very disappointed in the manner in which this has been presented because she believes it has created a negative aura of perceived conflict between the City of Plantation and our Christian community, which is so far from the truth. She thinks that all of

those who truly represent the Christian faith and the fact that they all collectively do not disagree that this is the time and the appropriate season to recognize the birth of Jesus Christ and also to recognize all of the other religions that are part of this very fine community. Banners on Broward Boulevard were discussed along with why the City selected the symbols that are on the banners. Those banners are there and have a dove and a dove of peace. Any Christian in this community who sees that banner has got to recognize that is the peace that was brought through the religion that we have the opportunity to embrace in our country of ours. The bells are the celebration of joy and that was celebrating and announcing the birth of Jesus Christ. The gift; what greater gift did any of us receive during that holiday period than the gift that was given again through the birth of Jesus and the celebration and all of the nurturing and implications that followed from that. That is the symbol, in her mind, in looking at symbols and banners, represents as much of the Christian faith in this community as any other kind of symbol that we would want to put forward. To suggest that the banner, does not, say Merry Christmas or Happy Hanukah, it is a misconception to think that this Council or this City has created an anti Christian kind of environment, which is what was indicated in the message that was sent out to the parishioners at St. Gregory's Church. She does not disagree with what Mr. Torres is attempting to do in terms of bringing Jesus back into Christmas but she does extremely disagree with the manner in which it has been done and the manner in which he has tried to make it reflect negatively on this community. Mayor Armstrong stated that the City employees and elected officials have gone far beyond the norm in government to be active and to publicly recognize the importance of God, faith, prayer and all religions in the life of this City and its residents. It is not done through any one particular symbol, it is done through the example that is set, the manner in which lives are lived and journeys are made. She was very hopeful that those present recognize that fact. If there is a place and a manner where we can appropriately celebrate or display whatever it is that this City wants to be able to accommodate at whatever location, we have an opportunity to discuss that.

Mr. Lunny reiterated his prior advice to the City Council. The request was to have a citizen erect a nativity scene on Fire Station #1. When the City allows a citizen to express on public property, the concern is that a public forum is created on property which is not considered a classic public forum site. That means if you allow citizens to erect a nativity scene on public property and it creates a public forum then you will not be allowed thereafter to restrict any content of any kind for that area. The advice was, "Do not create a public forum on a site that is not recognized in the law as being a classic public forum site." You can; however, have the City elect a holiday display where the City pays for the display, which can include a nativity scene; however, because of the establishment clause in the Constitution, you cannot endorse one faith over another and the test will be, "Is the overall message secular in nature and are you merely acknowledging differences in religious traditions that are associated with the holiday. The City has the power to purchase a nativity scene and include snowmen, WHO people from the Grinch Who Stole Christmas, a partridge and a pear tree, etc. that are secular, and then the best management practice would dictate that it not be put at a public safety site such as Fire Station #1, which is the one proposed, because people will probably come look at it and there would be conflicts with trucks and other things that happen at that site, which is somewhat constrained. He suggested that a place be picked that does not have those concerns. The advice received was, "Don't create a public forum by allowing someone that is not the City to purchase and install a display on public property that is not a public forum, but instead is a public safety site. If you wish to do this and create an additional place, don't put it on a public safety site and have other symbols and messages as well as a disclaimer about what you are trying to communicate.

Councilman Levy has had some very productive conversations with Mr. Torres and Rosarie regarding this issue. He pointed out that based on our counselor's advice last time, he made a motion that the City sponsor this and that the City select an appropriate place. That motion did not get a second; therefore, it failed. A vote was not taken on this matter and unfortunately, the impression was given that we voted. Two motions were made; one by Councilman Fadgen and one by himself, both of which died for lack of a second. The motion did include that

they follow their counselor's advice, which is all they can do, and that the City sponsor the nativity scene and other secular devices are recommended by counsel as well as select the appropriate place.

Motion by Councilman Levy, seconded by Councilwoman Uria, to have the City sponsor a definition of the season to include such items as a nativity scene, a possible menorah, a possible Kwanza display and symbols for display. The City will also select the location so as to honor all religions.

Councilman Fadgen concurred with Mayor Armstrong; we have a long history of being very supportive of all religions here in the City. He believes it is time to go forward. He disagreed with Councilman Levy and that is why he did not second the motion during the previous meeting. He does not believe in having the City purchasing an assortment of icons for whatever denomination; he does not want to spend any City money. If there is a strong feeling within the community then the organizations, individuals or communities should come up with whatever monies are necessary.

In response to Councilwoman Uria, Mr. Lunny indicated that it would be appropriate to have a date certain with regard to Councilman Levy's motion. If a public forum is created you will not be able to constitutionally prevent any speech at the forum, however offensive. If government speaking is done it eventually becomes more of a political issue opposed to a legal issue as long as you meet the legal test of having an overall secular message and downplaying the religious significance of the time. He suggested that this be limited to recognized legal holidays or seasons that are secular in nature. The best advice is not to put up any holiday displays and the second best advice is if a holiday display is put up, no religious symbols whatsoever. A couple of years ago Mr. Torres suggested that the nativity scene be put in City Hall and that was accommodated by this Administration.

Councilman Levy questioned whether funds could be donated to the City for the purpose of purchasing display materials. Mr. Torres has offered to fund the display; therefore, it would not cost the City any funds in the amount of about \$4,000 regarding the nativity part of this display.

Mr. Lunny stated that as long as it is City property that the City stores, maintains, upkeeps and has control over, how you acquire it is irrelevant.

In response to Councilwoman Uria, Councilman Levy indicated that he and Mr. Torres have spoke about Liberty Tree Park and they have not looked at any other locations. He did not object to the nativity scene being placed at Liberty Tree Park.

Councilman Tingom requested that Councilman Levy amend his motion after hearing from the public.

Councilwoman Bendekovic opened discussion to the public.

Len Torres, resident, was present. He stated that there was not a nativity scene in the lobby of City Hall four or five years ago. Today there is a small nativity scene; however, in his opinion, it does not reflect the importance of Christmas and our Savior. Many cities are displaying nativity scenes and they are starting to be accepted nationwide. With regard to the banners, he does not feel they represent the Christian community. Mr. Torres went on to apologize for all of the rude calls to City Hall and indicated that that was not his intent. He felt a better venue for the nativity set would be at Liberty Tree Park.

Aubrey Cuthbertson, resident, presented a petition. She believes the banners should show all denominations and religions and noted that there is nothing about the birth of Jesus Christ on the banners. She has heard that there used to be a nativity scene in front of Fire Station #1 many years ago.

Terry Whalen, resident, hoped that something could be done; he is tired of the political correctness that we all are suffering from.

Tom Armstrong, resident, has a difference of opinion with Mr. Torres. In his opinion, what was done should not have been done and what was done was insulting to the City Council. He is proud of the Council and hopes that Mr. Torres would look further into what was said so that everyone can move forward.

Jennifer Dempshire, resident, believed that a public nativity set is important to Christians.

Councilwoman Bendekovic advised that she previously spoke with Fire Chief Pudney regarding a nativity scene at Fire Station #1, and to his knowledge, there was never a nativity scene at that site.

Dennis Conklin, resident, was fine with the placement of the nativity scene at Liberty Tree Park; however, he did not feel that the City should pay for the nativity scene.

Councilwoman Bendekovic closed public discussion.

Councilman Fadgen stated as a Point of Order, that he objected to closing the public hearing until testimony is heard as to whether there was or was not a nativity scene at Fire Station #1 some time in the past.

Public discussion was reopened.

Chief Pudney clarified that he has been a member of the Fire Department since 1972 and to his knowledge, there has never been a nativity scene displayed at Fire Station #1 located at 5200 West Broward Boulevard.

Betty Cobb, resident, stated that she moved to Plantation over 50 years ago and there was a nativity scene in front of Fire Station #1 in the 1960's. She does not know where the nativity scene is today, but stated that it was there for several years.

Councilwoman Bendekovic closed public discussion.

Councilman Tingom moved to amend Councilman Levy's motion. He referenced a letter from Dan Austin and read two paragraphs from the letter, which he believes captures the spirit of what is being discussed. He would like the motion to be amended to read as, "Accept Mr. Torres' offer to donate funds to the City for a secular display that would include a nativity scene and acknowledge but not endorse religious traditions of the seasons. It could be erected after Thanksgiving and come down before New Year's and the design, content and placement would be up to the City, the display would not be located on a public safety site and this issue should be reviewed in a year."

Councilman Levy and Councilwoman Uria accepted the amendment.

Mr. Lunny cautioned to be very careful that a public forum is not created; this needs to be totally in the City's control.

Councilman Fadgen advised that he does not want the City obligated in any way to purchase the display; the public can donate or supply the nativity scene themselves. He moved to amend the motion to permit the placement of the nativity scene at Liberty Tree Park up to 30 days or any other display related to the national

holiday, as long as it is in good taste and made of appropriate materials and not exceeding 12 feet x 12 feet by six feet in height with a separation of 25 feet between displays.

Councilman Levy stated that no one was questioning if there would be complaints, his concern was about whether the door was being opened for other groups to request the same right. City Council has assured us what we can do in order to assure that we control and do not allow a heretic group to put up whatever they want. The City cannot accept the amendment because it does not fit the legal principles as he understands them from the City Attorney.

In response to Mr. Lunny, there was not an acceptance to Councilman Fadgen's amendment; therefore, it dies.

Mr. Lunny discussed legal issues and suggested this be done the most defensible way possible; trying not to create problems that may come up in the future.

Councilwoman Bendekovic thanked Mr. Torres for apologizing for the individuals who were not so kind. She clarified that a vote was not taken at the previous meeting. From what she understands, Mr. Lunny has presented a legal window to go in a different direction; however, it must be contained and cannot become a public forum.

Mr. Torres advised there are three churches who contributed to the nativity set; St. Gregory, All Saints and Bonaventure.

Motion by Councilman Levy, seconded by Councilwoman Uria, to have the City sponsor a definition of the season to include such items as a nativity scene, a possible menorah, a possible Kwanza display and to purchase symbols for display and the City will also select the location so as to honor all religions; accept Mr. Torres' offer to donate the funds to the City for a secular holiday display that would include a nativity scene and acknowledge but not endorse religious traditions of the seasons; the display would go up after Thanksgiving and come down before New Year's and the design, content and placement would be up to the City, the display would not be located on a public safety site and this item will be reviewed next year. Motion carried on the following roll call vote:

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

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PUBLIC REQUESTS OF THE COUNCIL CONCERNING MUNICIPAL AFFAIRS

Councilman Levy wished everyone a wonderful season. He appointed Jayne Flanigan to the Complete Count Committee.

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Councilman Fadgen appointed Bruce Anchil, architect, and Rico Petrocelli to the Complete Count Committee. He wished everyone a Merry Christmas, Happy Hanukah and a Happy New Year.

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Councilwoman Uria appointed Owen Duke and Nancy Burch to the Complete Count Committee. She thanked everyone for the nativity scene conversation and the apology. She wished everyone a Happy Hanukah, a Merry Christmas and Happy Holidays.

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Councilman Tingom appointed Shirley Baker and Denise Horland to the Census Committee. He thanked Mr. Butler for his analysis of the traffic situation on NW 74th Avenue.

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Councilman Tingom attended the School Board of Broward County Oversight Committee and noted that there were no recommended changes for the 2010/2011 academic year.

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Councilwoman Bendekovic wished everyone Peace on Earth and happy birthday to her twin grandsons. With regard to Resolution No. 7374, which says, "The City Council will not consider matters from the public as a non agenda item which requires the City Council's decision, direction or action where the matter is not a bona fide emergency." In the last six months motions have been made when a conflict arises. She questioned whether Council is bound by the resolution because it is not being followed.

In response to Councilwoman Bendekovic, Mr. Lunny advised that the resolution is still in effect and if a member of the public approaches the Council and requests relief or action it should not be dealt with that evening and referred to staff for a report or if sponsored by an elected officer prior to coming before Council, it should be put on an agenda so that everyone is aware of it. The Council is the judge of its own procedures and if you want to address something and move on it he will not say you cannot because of the resolution.

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Mr. Torres questioned when he could deliver the nativity scene.

Councilwoman Bendekovic advised that a donation must be made, not the nativity scene itself.

In response to Councilman Fadgen, Mr. Lunny indicated that you need to be careful in having control over the design and arrangement of the display.

Councilman Levy suggested that Mayor Armstrong and Mr. Lunny meet with Mr. Torres and work out whatever is legal and appropriate so that we maintain control.

Mr. Lunny felt this is an executive decision. The overall effect of the holiday display cannot be the religious message. Unless all of the Council members tell Mayor Armstrong that they intended to accept this nativity scene, the motion will be construed as a financial donation and she will try to meet the understanding of the Council to work out this sensitive issue.

Mr. Torres advised that he would donate \$3,000 and the City can purchase the nativity set.

Councilman Fadgen did not understand why in kind donations could not be accepted.

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WORKSHOP – None.

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Meeting adjourned at 10:30 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 Minutes was received by the Office of the City Clerk and entered into the Public Record this _____ day of _____, 2010.

Susan Slattery, City Clerk