

**CITY OF TEMPLE TERRACE, FLORIDA
MAYOR AND CITY COUNCIL
MINUTES**

**Regular Meeting
Tuesday, November 17, 2009
Council Chambers-City Hall**

Having been duly advertised as required by law, the regular meeting of the Mayor and City Council of the City of Temple Terrace, Florida, was held on Tuesday, November 17, 2009, in the Council Chambers at City Hall.

PRESENT WERE: Mayor Joe Affronti, Sr., Council Members Alison Fernandez, Ron A. Govin, Ken Halloway, Mark A. Knapp, and Mary Jane Neale, City Manager Kim Leinbach, City Clerk Lisa Burns, and City Attorney Mark Connolly.

ALSO PRESENT WERE: Public Information Officer Michael Dunn, Code Compliance Director Joe Gross, Leisure Services Director James Chambers, Community Development Director Charles Stephenson, Police Chief Ken Albano, Public Works Director Joe Motta, Human Resources Director Woody Hubbard, Fire Chief Keith Chapman, Finance Director Diane Reichard, Senior Planner Tom Moore, Senior Planner Brad Parrish, Gail Verlin, Rita Landall, Debbie Jordan, John Rains, Doug Ebbers, Mary Clapp, Norma Reno, Todd Pressman, Gary Sawtelle, Jerry Goddard, Cindy LeCompte, Jean Berg, Linda Garnatz, Irene Bosek, Ralph Bosek, Harvey R. Simpson, Eva L. Simpson, Jan Sutton, Joyce McKenzie, Mark Sneed, John McGlinchy, Tom Allison, Cheri Donohue, Barbara Sparks-McGlinchy, Grant Rimbey, Rebecca Barlar, Doug Barlar, Mel Jurado, James Ruyle, Joe Bell, Jennifer Judge, Delisa Alfonso, Virginia Long, Lana Burroughs, Delaine DeHainaut, Monica Simon, Kathleen Paul, Russ Patterson, Bob Staehle, Cliff Brown, Al Latina, Joan Staehle, Richard Reina, Liz Affronti, Jim Sanderson, Brenda Breeden, Virginia Halloway, and several other persons.

Mayor Affronti called the meeting to order at 6:00 p.m., after which he led the Pledge of Allegiance to the flag and offered a brief invocation.

There were no Proclamations, Recognitions, or Special Presentations.

Minutes of Previous Meetings:

Upon motion of Council Member Fernandez, seconded by Council Member Halloway, and unanimously carried, the **MINUTES** of the November 3, 2009, Council Meeting were **APPROVED**.

Public Hearings:

1. Zoning Reclassification – 8781 Orange Leaf Court – Laurel Oaks Apartments.

Mayor Affronti opened the Public Hearing for 8781 Orange Leaf Court – Laurel Oaks Apartments.

Senior Planner Tom Moore stated this is the second Public Hearing on this zoning request. He restated from the previous meeting that the Community Development Department has prepared a City-initiated zoning reclassification request, RZP#09-04, for an approximate 16.61 acre parcel of property, located on the east side of Davis Road and the north side of Old Temple Terrace Highway, to complete the administrative requirements from the annexation of the property in May of 2007.

The Senior Planner commented that the property was developed as a 192-unit apartment complex, and that Staff is recommending reclassification from PD-H (Planned Development for Housing) in Hillsborough County to PD (Planned Development) in Temple Terrace.

The Senior Planner briefly reviewed the existing zoning, Future Land Use designation, adjacent zoning, adjacent Future Land Use designation, and adjacent existing use of land. He explained the recommendation of approval is based on the existing zoning category, the surrounding development pattern, the location of the property, and the anticipated future use of the property. He noted that the City's Development Review Committee (DRC) has reviewed the request and adequate capacity for public facilities and services is available.

The Senior Planner commented that the Hillsborough County City County Planning Commission has reviewed the application, indicated the recommended Planned Development zoning district is compatible with the property's adopted "UMU-20" land use designation, and has no objection to the proposed zoning reclassification.

The Senior Planner noted the PD zoning Conditions of Approval per the conditions of approval and final site plan, which was reviewed by City staff and approved by Hillsborough County on May 19, 1983, are set forth in the Memorandum to the City Manager dated September 24, 2009, a copy of which is part of the record. [Note: These Conditions of Approval were also included in the Minutes of the previous City Council Meeting held on November 3, 2009.]

The Senior Planner reviewed that the property was properly posted, appropriate Notice was given, and no comments were received from the public.

Mayor Affronti called for any comments from the public or from Council. There being no comments from the public or the Council, Mayor Affronti closed the public hearing.

2. Zoning Reclassification – 8713 Temple Terrace Highway – Point Plaza.

Mayor Affronti opened the public hearing and called on Senior Planner Tom Moore to present the topic of the Public Hearing.

Senior Planner Tom Moore commented this is the second Public Hearing on this zoning reclassification request. He restated from the previous City Council Meeting that the Community Development Department has prepared a City-initiated zoning reclassification request, RZP#09-06, for the above property, which is bounded on the north by Temple Terrace Highway, on the west by Davis Road, and on the south by Harney Road, and consists of 4 platted lots totaling approximately 16.57 acres. He added it is currently developed as an approximately 51,000 square foot shopping center, with three undeveloped outparcels.

Utilizing a PowerPoint presentation, the Senior Planner explained the current zoning of the various parcels. He noted that the Comprehensive Plan was amended on June 30, 2009, to change the designation of the property from the County's Community Mixed Use-12 (CMU-12) to Community Mixed Use-12 (CMU-12) in the City of Temple Terrace.

The Senior Planner commented that Staff is recommending reclassification of all four lots to Planned Development (PD) in the City of Temple Terrace and has prepared PD zoning conditions of approval that incorporate prior County approvals. He added that construction of the County-approved proposed development scenario for Lot 3 will also require submittal of a detailed site plan for review by City staff and approval by City Council. He briefly reviewed the existing zoning, Future Land Use designation, adjacent zoning, adjacent Future Land Use designation, and adjacent existing use of land.

The Senior Planner informed the Council that the City's Development Review Committee (DRC) has reviewed the request, and adequate capacity for public facilities and services is available. He noted that the Hillsborough County City County Planning Commission (HCCCPC) has reviewed the zoning reclassification application and has indicated that the recommended PD zoning district is consistent with the property's adopted "CMU-12" land use designation, and they have no objection to the proposed zoning reclassification. There were no comments received by City staff from the public as a result of posting the property and the noticing of this rezoning.

The Senior Planner briefly reviewed the Conditions of Approval as set forth in the Memorandum to the City Manager dated September 24, 2009, a copy of which is part of the record. [Note: These Conditions of Approval were also included in the Minutes of the City Council Meeting of November 3, 2009.]

Mayor Affronti called for any comments from the public or from Council. There being no comments from the public or the Council, Mayor Affronti closed the public hearing.

There were no Persons Wishing to be Heard on Items NOT Listed on the Agenda, and there was no correspondence, no communications, or petitions before the Council for consideration and action.

Presentations:

1. Voluntary Annexation – 8601 Harney Road (M&B Products).

Senior Planner Brad Parrish addressed the Council concerning the request for voluntary annexation received from the owner of M & B Products, Inc., an existing dairy farm located at 8601 Harney Road, on the south side of Harney Road approximately 1,300 feet east of 78th Street. He continued that the property consists of approximately 140 acres, currently zoned Agricultural-Rural (AR) and Planned Development (PD-H #82-40) in Hillsborough County with Hillsborough County Comprehensive Plan designations of Community Mixed Use-12 (CMU-12) and Residential-6 (R-6).

Utilizing a PowerPoint presentation, the Senior Planner noted the property is located between the Riverdale Subdivision and the 301 Industrial Complex area. He briefly summarized the findings and recommendations from each of the City's departments, noting that the property will generate about \$29,845 in annual tax revenues, and City services are available and would be provided in a manner consistent with existing service levels. Based on these findings, the Senior Planner stated that staff recommends Council approval.

Mayor Affronti called for questions and comments from the public and Council, of which there were none.

The City Manager noted that the residence adjoining this property will also be coming before the Council requesting voluntary annexation, which is essential to prevent the residential parcel from becoming an enclave. He explained the annexations must be done in two steps, with the dairy farm annexation occurring first, followed by the annexation of the residential parcel.

2. Post Office Site.

Mayor Affronti introduced several persons present from the United States Postal Service, including Jean Berg, Real Estate Project Manager for the Southeast Facilities Service Office in Atlanta, Georgia; Jerry Goddard, Manager, Facilities Service, Atlanta, Georgia; Cindy LeCompte from the District Office; and Gary Sawtelle, who is in charge of Communications for the Postal Service. In addition, he noted that Mark Sneed from The Vlass Group is also present.

Jean Berg stated they are present this evening because the property where their retail facility is currently located in Temple Terrace is being developed, and they will have to relocate the Post Office facility. She explained that when they start this relocation process, the first step is community contact, to inform the citizens how this process works. She continued that the Facilities Service Office will be in charge of the project, and she is the Real Estate Project Manager. She said they will start with a "solicitation," which will occur approximately 30 days from this meeting; between now and the solicitation, they welcome any comments the Council may have and anything the public would like them to know or be aware of as they begin the process to look for a new location for their facility.

Ms. Berg noted they have no site selected at this time, as that is all part of the open solicitation process, which will begin in 30 days and run for approximately 30 days. She explained they are looking for a facility of somewhere between 15,000 and 17,000 square feet, with plans to consolidate the carrier annex and the retail facility; they are looking for a facility to handle all of their needs that is operationally viable and economically feasible. She commented that their preferred area will be within one to three miles from the current location; they are not looking to relocate any further from the City. She noted that the facility will have to have access for their customers, the ability to bring in the mail truck to drop off mail, and a place for all of their vehicles and delivery trucks that will be housed there overnight. At end of the 30-day solicitation period, she said they will look at all of the locations offered to them and have a final site meeting, where various members of the District, employee service office, and representatives from design and construction, real estate, operations, and marketing to see which locations will be "contending" sites.

After that meeting, Ms. Berg said they will put out a list of sites that have been offered to them, identifying which are "contending" sites and which are not; there will be another 30-day comment period to receive comments from the citizens and the City. She noted the sites will not be ranked, but the reasons will be stated for those sites considered "non-contending," which are basically those sites which don't meet the requirements set forth in the solicitation. She continued that after the 30-day comment period the final selection is made, and it will be announced to the City, and then the City has a 30-day comment period on the selected site before they actually sign contracts and begin construction. She concluded that the process does take several months, but they wanted everyone to know the process is starting and they welcome any comments the City or the public may have.

Council Member Halloway questioned whether the Post Office is operated as a profit center. Ms. Berg responded their revenue is intended to meet their expenses, adding that the Post Office, which is not tax-supported, lost \$3.8 billion last year. She said they are limited in how much money they can borrow, so their nationwide goal is to “break-even” – not to make huge profits. She acknowledged the Temple Terrace Post Office does have significant revenue.

Council Member Govin commented that about six to eight months ago an announcement was made that a number of Post Offices in the Tampa Bay area would be closed, and this one was on the list. He asked whether there was a reason it was on the list, and a reason why it could not stay in the same general area.

Ms. Berg responded there is no reason it cannot stay in same general area, but it will depend on what is offered to them in the process; for the carriers involved, it makes sense to stay close to where it currently is located. Regarding it being on the list, she said most of those were in major metropolitan areas, where they have excess capacity; headquarters went through and said any facility that met certain criteria was put on the list; it was never intended that all of those facilities on the list would be closed, but those facilities would go through the next stage of evaluation.

Council Member Neale asked whether that means there will be a Post Office that will remain open in Temple Terrace. Ms. Berg responded that should be, if they receive financially responsible and operationally viable offers for another facility they can operate out of that makes economic sense.

Council Member Fernandez commented that as a consumer, she likes to accomplish multiple tasks at one location; she questioned how that fits in with their evaluation process. Ms. Berg responded it is a full service retail facility. Council Member Fernandez continued that one of the reasons the City’s leadership wanted the Post Office in that location is that it brings people into that location, and she asked how they evaluate that criteria. Ms. Berg responded that when they do their evaluation, their marketing people are concerned about where the consumers will be wanting to go; also one of the reasons they have this community contact time is to give consumers the opportunity to say why they like one site over another; the City will have another opportunity at the time of final selection to offer their opinion.

Council Member Halloway said he hopes they will consider the fact that the City is putting up a very fine Town Center, and they hope the Post Office will be there, adding that Mark Sneed is here. Ms. Berg said they are hoping that Mr. Sneed will give them some very good proposals.

The City Manager mentioned that in his 11 years with this City government, no other topic has generated more interest and emails than this Post Office; it shows how important it is to this community.

Mayor Affronti commented that a number of people wish to speak to this issue. He added that not only are the citizens vocal about the Post Office, the numbers show the Temple Terrace retail facility is 5th out of 16 locations within the area, behind the airport facility, Carrollwood, New Tampa, and the Ehrlich Station. He reiterated the numbers show the citizens support it and love the Post Office being here.

Grant Rimbey, 411 Island Road, said he is representing the Redevelopment Task Force, Citizens for Redevelopment of Temple Terrace, and the Temple Terrace Preservation Society. As one of three incorporated cities in Hillsborough County, he said the City deserves its own Post Office, which should be kept in the core of the City. He added that neither Plant City, nor the City of Tampa is being threatened with the loss of their Post Office. Regarding the downtown redevelopment project, which has been going on for ten years, he said the Post Office has always been viewed as an ideal anchor, which would attract patrons to the redevelopment area both day and night; therefore, he would strongly urge the Post Office to remain as an active component of the downtown redevelopment area. He noted it may require some thinking "outside the box," in that it may require the retail facility and annex to remain separate, as he explained his concern of sufficient parking for their vehicles that need to come to the annex. He expressed hope that the Post Office could work out an amiable solution with the City and the developer of the downtown redevelopment area.

Barbara Sparks-McGlinchy, 507 Terrace Hill Drive, Executive Director of the Temple Terrace Chamber of Commerce, said she has been a resident of Temple Terrace for over 27 years. She remarked the Temple Terrace Post Office is a vital part of the City, especially the downtown area. She said it is difficult to imagine an area so saturated with businesses and restaurants not having the Post Office in the heart of one of its busiest districts. She commented that the Chamber of Commerce utilizes the current Post Office frequently, which helps them do their business more efficiently, adding that it is an essential ingredient that will bring success to the downtown redevelopment. On behalf of the Chamber members, herself and her family, she strongly encouraged the Post Office to be located in or near the heart of the downtown redevelopment area.

Al Latina, President of the Temple Terrace Garden Club, 7002 Doreen Street, Tampa, addressed the Council, stating the opposition of the Garden Club to the closing or moving of the Temple Terrace Post Office outside of the City. He explained they rely on the Post Office for corresponding with their membership, businesses, and other individuals. He said it would be a major inconvenience if they had to travel several miles to get to a Post Office. He expressed their opinion that the Town Center is the logical location for the Post Office and hope something can be worked out to accomplish that. He added that it is inconceivable to them that a City such as Temple Terrace and the immediate surrounding areas could be without a local Post Office.

Brenda Breeden, 6809 Bluffs Boulevard, President of GFWC Temple Terrace Woman's Club, commented that while the other speakers said "all the right things," now is not the time for the Post Office to alienate themselves from the citizens, as she understands they are losing business, and this is a very busy Post Office, as attested by long waits in line. She concluded it needs to stay in Temple Terrace, in the center of the downtown area.

Dr. Mel Jurado, 5406 Riverhills Drive, incoming President of the GFWC Temple Terrace Woman's Club, commented that Temple Terrace celebrates an 85-year history as an incorporated City. As a citizen, she remarked she has never frequented the Post Office when she didn't have to stand in line. As a business owner, she said she is shocked that the Federal government would even contemplate taking this service away. She continued that today she requested their staff pull their receipts over the last year; after six months she told them to stop, noting that the receipts reflected \$6,780 for just those six months. If this service ceases to exist, she said the next closest option for a Post Office is the University of South Florida. She questioned whether the University would welcome the additional traffic flow on an already stressed parking environment.

Noting that the current Post Office is located in the center of the community, Dr. Jurado said if the Post Office chooses not to locate within the City borders, her business will choose to do more business with Federal Express and United Parcel Service, who do choose to do business with our City. She concluded that they are delighted with Mark Sneed and the developers, and they hope that the Federal government will choose to do business with the City. She requested that those present this evening, and those viewing the meeting from home, contact the City's three U.S. Congressmen: Congressman Adam Putnam, Congresswoman Kathy Castor, and Congressman Gus Bilirakis, to save our U. S. Post Office.

Jim Sanderson, 12307 N. 52nd Street, stated he is an EBay instructor, teaching people how to sell items on EBay. He remarked he has worked with the local Post Office, which has many good programs to help lighten the load, such as allowing individuals to print their own postage labels for shipping. He said it would be a shame for the many small businesses to lose this Post Office, which is an important part of our community. He briefly mentioned historical facts about the Post Office, dating back to 1603 when William Penn started the first Post Office and Benjamin Franklin was appointed the first Postmaster General in 1737. He encouraged the City and Post Office to work together to keep the Post Office in the City.

Richard Reina, 216 Inverness Avenue, commented that he doesn't believe the City will have a problem keeping the Post Office in the City; to have a City of over 25,000 without a Post Office is inconceivable. He noted the Post Office has plenty of problems, but they can't take away one of their large income producers to solve their problems. He expressed hope that the developer and the Post Office can get together and provide a really nice Post Office in a good location – and an art center. Mr. Reina briefly left the Post Office topic to comment on the recent Art Festival, encouraging citizens to support the hard-working artists. He also mentioned the outstanding Veteran's Day Program, coordinated by the Leisure Services Department at the Lightfoot Center.

Gary Sawtelle, Corporate Communications for the Post Office, commented that they [Post Office representatives] came here tonight to solicit help in finding a new location for the Post Office in Temple Terrace – someplace downtown - and from the remarks tonight, it appears they are “on the same page.” He continued that at no point have they said they are going to close the Post Office or move it out of the City. He said they look forward to the help and support of the citizens and City Council, adding that he wants it to be clear that they are here to provide service for Temple Terrace and need their help to find a great spot within the City for their Post Office facility. Mayor Affronti encouraged Mr. Sawtelle to contact City Manager Kim Leinbach for any assistance they may need.

Council Member Knapp questioned whether the Post Office is looking for a parcel of land on which to build and own and operate, or a “build to suit” to lease. Ms. Berg said they are looking for existing space that they will then build out to their specifications; they do not have funding for a new facility right now. Council Member Knapp confirmed with Ms. Berg that they are looking for existing space they can renovate. He added that hopefully they will be able to find something suitable, because the City has a lot of empty space.

Mayor Affronti commented that Mark Sneed has been diligently working with the Post Office, as well as other businesses who are renting in the downtown redevelopment area. He asked Mr. Sneed for any comments he wished to share.

Mr. Sneed thanked the Post Office for coming to the meeting, and said the development team is trying to accommodate their needs. Adding to Council Member Knapp's comments, Mr. Sneed noted that there is empty space in the town center area. He said he is hopeful that the proposals they have discussed and made to the Post Office will fall in with the proposals they are soliciting "outside." He asked Ms. Berg whether he should be providing new proposals or re-forwarding his emails to her. Ms. Berg responded that there is a form and a format for the solicitation; she will make sure Mr. Sneed gets the appropriate package to respond to their solicitation. On behalf of Vlass Temple Terrace, Mr. Sneed said they recognize the importance of the postal facilities within the town center and will do whatever they can, within reason, to accommodate that.

There were no Site Plan Reviews before the Council for consideration and action.

Resolutions for Consideration and Action:

Mayor Affronti announced that Resolution No. E-2 will be pulled for further discussion.

The City Manager reviewed each of the proposed Resolutions for consideration and action.

Council Member Govin requested that Resolutions E-4 and E-5 be pulled for further consideration.

Council Member Halloway requested that Resolution E-6 be pulled for further consideration.

Upon motion of Council Member Fernandez, seconded by Council Member Govin, and unanimously carried, Resolutions **E-1 and E-3** were adopted by consent, as follows:

RESOLUTION NO. 139-09, approving the Mutual Aid Agreement between the City and the City of Plant City, outlining the respective jurisdictional responsibilities.

RESOLUTION NO. 140-09, approving the budget adjustment to appropriate reserve funds based on prior year-end calculations in the amount of \$237,165; further, re-appropriating the 2008-09 encumbrances, as outlined in the attachment, for 2009-10 expenditure.

Regarding **Resolution No. E-2**, the City Manager requested that Public Works Director Joe Motta provide a brief outline of the events concerning this Resolution, followed by the City Attorney providing his analysis of the situation.

Public Works Director Joe Motta reviewed that they recently advertised the 56th Street corridor improvements, which will extend from the Hillsborough River to Temple Heights Road, noting it is a Local Agency Program (LAP) with the Florida Department of Transportation (FDOT) that will include Federal and County Incentive Grant Program (CIGP) funding. He continued that bids received from six contractors were opened on September 24; after reviewing the low bid submitted by Pospiech Contracting, it appeared there were irregularities in several unit prices that would lead to an unbalanced bid. As a result, he said they asked the City's consultant to review these items and look at the bids, which revealed they had significantly underestimated the quantities for some of the items, and they were much lower than they should have been. He commented that if Pospiech Contracting had used the correct quantities, the second bidder, Pepper Contracting, would become the low bidder.

The Public Works Director continued, stating that shortly after they identified the problems, Pepper Contracting filed a formal bid protest. He said he advised the City Manager of the situation, and they discussed the matter with the City Attorney; after an analysis by the City Attorney, the City Attorney recommended that City Council reject all bids and re-advertise, in accordance with the City Code. He continued that he also consulted with FDOT, and it was also their opinion that the City should re-advertise. The Public Works Director concluded that it is recommended that the bids submitted on September 24, 2009, for the 56th Street corridor improvements be rejected and the project be re-advertised.

Todd Pressman, Post Office Box 6015, Palm Harbor, stated that he is representing Pepper Contracting. He informed the Council that Pepper Contracting is a proven contractor, having just finished the Busch Boulevard improvements. He suggested the issue before Council is moving ahead as quickly as possible on an important project for the City. He reviewed that the City's bid documents provide the City with the right to accept any bid, which, in the owner's opinion, is the lowest and best, and in the best interest of the owner; Pepper Contracting is the lowest bidder. He continued that the bid document also says that the ultimate contract price, which will be paid by the City for the project, will be determined by unit prices. He stated that Pepper Contracting is prepared to accept their price submitted for those unit prices.

Mr. Pressman noted the bid document also says specifically that the bidders have been notified that the estimated quantities are approximate and the City reserves the right to increase, decrease, or omit the amount of any class or portion of the work. He explained their contention that Pepper Contracting is a proven and outstanding contractor, who bid this contract and is ready to move forward and stand with the contract. He said that will put the City in the position of having no hesitations, problems, or holds; the City will have a contractor ready to move ahead and do the job the way the City wants it done.

The City Attorney questioned Mr. Pressman's role in this matter. In response, Mr. Pressman explained that he is a Government Affairs Consultant who works with Pepper Contracting on a lot of governmental-type issues.

Mary Clapp, Counsel for Pepper Contracting, stated that the issue before Council, regarding the understated estimates in the bid documents, would not be an issue if all of the bidders had bid fairly, but unfortunately, they did not. Attorney Clapp explained that all of the bidders have the opportunity to review the plans, review the FDOT specifications, and determine the quantities, and they are instructed in the bid documents to verify quantities, rather than rely on estimates, and submit their bids based on that information. She opined that one bidder, Pospiech, took advantage of the apparent underestimation and submitted an unfair, unbalanced bid, which, when using the corrected quantities, will *not* result in the ultimate lowest cost to the City; other contractors, including Pepper Contracting, bid fairly. If all of the bidders had bid fairly, she said this would not be an issue; it would not matter what the City had estimated, because the contract states that the contractor will be paid by the actual unit prices and that the unit quantities will be increased or decreased based on what actually occurs in the field. She said they understand the City wants to do the right thing.

While the Public Works Director stated the City hasn't had this issue before, Attorney Clapp noted that the City's partner in this project, FDOT, *has* had this issue before and has issued Review Committee Guidelines to its Technical Review Committee for FDOT projects.

Attorney Clapp continued, stating that the Guidelines instruct the Review Committee that when a bid is submitted that is materially unbalanced and will not ultimately result in the lowest cost to the FDOT, its reviewers are to reject that bid as non-responsive and review the next lowest bid, and so on, until they find a responsive bid, and then award that contract appropriately. She stated they also have two cases where this precise issue has come up, which she reviewed in detail, and which showed how the unbalanced bid was rejected, corrected quantities were applied to all of the bidders fairly, and the contract was awarded to the actual low bidder. She concluded her remarks by asking that the Council not reject all bids, but direct staff to perform an analysis and make a determination that indeed the bid of Pospiech Contracting is unbalanced, reject that bid as non-responsive, and award the contract to Pepper Contracting.

Doug Ebbers, Pepper Contracting, 8814 Roberts Road, Odessa, Florida, addressed the Council, stating that as his Attorney indicated, there is a clear legal precedent. Having made his living over the last 30 years in public works contracting, he said they live by a couple of clear principles in all public projects, whether City, County, or State; bids are to go to the lowest responsive bidder, and they work very hard to keep their prices level. He continued that it is not uncommon to find that quantities are a little different if they carefully review project details; the difference is whether one tries to capitalize on those types of situations and take advantage of it, as the low bidder in this situation did. He noted that if the correct quantities are utilized, Pepper Contracting is the low bidder. He remarked that re-bidding the project is extremely unfair to all of the others who bid, since it effectively exposes their previous bids. He commented that Pepper was \$334,000 lower than the next bidder; if the project is put back out for bid, their numbers are completely exposed to everyone out there, which is an extremely unfair thing to do, and it violates the spirit of the sealed bid process. He expressed his belief that is why the legal precedence is out there to make the award to the next lowest or appropriate bidder.

Mr. Ebbers reviewed that Pepper Contracting is a Tampa-based firm, with a perfect 100 FDOT score, having been graded in a number of categories. He noted they just completed a project on Busch Boulevard, which overlaid into the City of Temple Terrace. He added that they worked closely with Assistant City Engineer Michael Hall and were instrumental in assisting Mr. Hall in customizing the City's light pole bases, signalization feature, and brick pavers, and that is the exact same project on 56th Street that they did on Busch Boulevard. He said they stand ready to perform. Concluding that this is an amazingly tough economic time, he said they are trying hard to keep jobs, and they bid this project very aggressively to get it, and they would appreciate the understanding that going with the lowest, most responsive bid is the right thing to do.

The City Attorney briefly explained his involvement, stating that this issue came up during the Tozier trial; therefore, his colleague, Cate O'Dowd, performed the analysis under Florida Statutes 255.20, relating to public bidding and public works projects; the relevant Code Sections are 5.550, 5.535, and 5.545. He continued that they determined the most conservative approach would be to reject all bids and re-advertise, given the fact that there was a material error in their own bid documents. It was their belief, he said, based on case law, that if the Council was to go forward in that manner, it is something that would be entirely defensible. He cited case law, DOT vs. Grove Watkins Constructors, as the standard, that if the rejected party was going to sue the City, the Court would have to find that the City's decision basis was fraudulent, arbitrary, illegal, or they reacted dishonestly; given a good-faith error in the bid documents, they don't believe that would happen.

The City Attorney continued, stating that over the weekend, Mr. Rains' office sent him a packet of documents supporting their argument that Ms. Clapp has explained, providing arguments as to why Pepper Contracting should be awarded this contract, and that the low bid submitted by Pospiech should be rejected as being non-responsive. While he said he hasn't had time to go through all of the documents, he acknowledged they have some good arguments. He said the administration wanted to know what FDOT had to say about this; the Public Works Director contacted FDOT and explained the circumstances, and FDOT agreed it would be appropriate to reject all bids and re-advertise. He said one of the documents Mr. Rains' office presented is a memorandum from the U.S. Department of Transportation, Federal Highway Administration, that talks about bid analysis and unbalanced bids; part of the memo says that in cases where it is concluded, after examination, that the estimated quantities would not be a reasonably accurate representation of actual anticipated needs, they (referencing the State Highway Agency and Division Office) should consider rejecting all bids, correcting the quantities and re-advertising; however, it goes on to say that they do not *have* to do that, which is what Pepper Contracting is saying.

The City Attorney summarized that essentially the Code and bid documents provide the Council with a certain amount of latitude and discretion to decide what they believe is in the City's best interest under these circumstances. While staff believes the most conservative approach is to reject all bids, re-advertise and re-bid, he said Pepper Contracting has come and made a point, which he believes the Public Works Director would acknowledge, that on at least a couple of the line items the quantity price given by the low bidder was at least four or eight times higher than everyone else's unit price for that amount; if, in fact, City Council is not going to go with staff's recommendation, he suggested Council direct staff and the City Attorney to continue to review the bid documents and the additional items provided, and determine if the low bid should be rejected as being materially unbalanced and otherwise properly rejected under the bid documents in the Code, and whether it would be appropriate to award this contract to Pepper Contracting. He reiterated there is a certain amount of discretion awarded to the Council under the Code and Florida law to do what they believe to be in the City's best interest.

Council Member Fernandez sought confirmation that the City Attorney is essentially saying that there is legal precedence to support either decision, to which the City Attorney responded affirmatively.

Council Member Govin asked whether the bid amounts were made public; the City Attorney confirmed the bid results were made public. Council Member Govin, noting that he has done a lot of public bidding, remarked that, in that case, he does not believe it is fair to approve staff's recommendation. He continued that assuming Pepper Contracting did the bid correctly and submitted it and won, he said he believes they deserve to receive the contract award.

Upon motion of Council Member Govin, seconded by Council Member Knapp, **RESOLUTION NO. 141-09** was **ADOPTED**, directing staff to further review the bid documents for the 56th Street Corridor Improvement Project to determine, under the City's bid documents and applicable Florida law, it is appropriate to reject the bid of Pospiech Contracting as not being properly responsive to the City's bid documents, and if appropriate under Florida law, to award the contract to Pepper Contracting or whomever is appropriate under applicable Florida law, determined as having submitted the lowest responsive bid. Vote on the motion being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting "aye," no "nay."

Prior to vote on the above motion, Council Member Fernandez clarified that the result of this motion would be that staff would take the appropriate quantities and recalculate and verify. Mayor Affronti concurred that would be a fair way to do it.

The City Manager asked the Public Works Director whether the apparent low bidder, Pospiech Contracting, was contacted and advised that this issue would be discussed this evening. The Public Works Director responded that he had left a voice mail for the Vice President and, as a courtesy, stated that Pepper Contracting was going to be at the Council meeting this evening to protest, suggesting they could also come to the meeting.

Regarding **Resolution E-4**, while reviewing the Resolutions, the City Manager highlighted for Council's direction relative to the community redevelopment monies, that the administration is proposing to use \$501,252 to retire principal on the debt from money saved. He advised that they plan to reserve \$100,000 from the Redevelopment Director's salary in case of unexpected expenses; if not needed, at the end of the year they will recommend at that time to apply them to a further principal reduction.

Council Member Govin commented he would like to be more aggressive with the proposed principal reduction of \$501,252, preferring to pay the full \$601,252. He explained they are simply holding money in case they need it, but there are City reserves, if a need should arise, that they could use.

Upon motion of Council Member Govin, seconded by Council Member Knapp, **RESOLUTION NO. 142-09** was **ADOPTED**, approving the adjustment to the 2008-09 budget reflecting the appropriation and allocation of funds, as outlined in the attachment, but amended to increase the principal payment to \$601,252, and adjusting the 2009-10 budget accordingly. Vote on the motion being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting "aye," no "nay."

Regarding **Resolution E-5**, Council Member Govin questioned the use of the extra funds in a lean year. He said he has no problem with the Medical Director, although he preferred that the funds would go back into the general fund, and if a Medical Director was needed, then Council could vote on it.

The City Manager responded that the City currently operates with one individual serving as Medical Director; that person can essentially never leave or take time away. He added that the proposed position has been provided for, but not funded, and would be the person to succeed the current Medical Director in a couple of years. He said the administration believes it is essential to continue the Emergency Medical Services operation that they have this position.

Fire Chief Keith Chapman commented that the sale of the old fire truck is part of the City's vehicle replacement program. He reviewed that the capital replacement plan has been put on hold for the most part. He continued that when they purchased the new fire truck, as part of the vehicle replacement program, they also purchased equipment for that fire truck, and part of the equipment included self-contained breathing apparatus. He noted that as the emergency equipment is updated, parts become unavailable and incompatible with older versions of the self-contained breathing apparatus. He explained they were not aware when they purchased the new air packs for the new fire engine that a certain piece was not compatible with the rest of the air packs on the truck. As a safety issue, he said they obviously cannot have air packs that do not consistently work, as the firefighters use these air packs to breathe when they go into burning buildings.

Fire Chief Chapman commented that the City Manager explained the importance of having the Associate Medical Director and the availability of 24-hour a day/7 days a week consultation, which is required by Florida Statutes. He expressed their belief that contracting with a second physician was the best way to fulfill that requirement. When they were able to sell the old fire truck to Desoto County, Chief Chapman concluded they felt these items were a good appropriation of those funds.

Upon motion of Council Member Halloway, seconded by Council Member Fernandez, **RESOLUTION NO. 143-09** was **ADOPTED**, approving the adjustment to the 2009-10 budget to reflect \$18,930 in revenue derived from the City's sale of the 1991 fire engine. Vote on the motion being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting "aye," no "nay."

Regarding **Resolution No. E-6**, Council Member Halloway tempered his remarks by stating that he would not vote against approval of this Resolution; however, he expressed great concern about the language in one of the grant applications where it was stated that the language arts benchmark testing for 2009-10 revealed that more than 25% of the fourth and fifth grade classes at Lewis Elementary School demonstrated "significant delays in reading fluency," which he interpreted as one in four students in the fourth and fifth grade reading is flunking reading. He continued, reviewing the grant's request for CDs, and that at the end of day they are planning an American Idol Party. He presented his views on learning to read and teaching reading, and noting the success of Charter Schools, suggested some of the teachers may want to explore the methods used by Charter Schools, further suggesting that there must be a history of reading instruction, utilizing tried and true teaching methods. He expressed his concern that it is essential to democracy to have an educated population, and without an educated population, this country will not stand. He concluded by offering to take his fifth grade readers to one of the reading classes and see how the students do.

Mayor Affronti commented that they have to give the teachers credit for recognizing they have a problem of 25% not reading up to level; the issue is whether to approve the grant for the teacher to do what she believes is the best way to approach the problem. Council Member Halloway responded he would not say "no" to the grant.

Council Member Fernandez commented that she happens to know that this teacher teaches some students with learning disabilities; those students are mixed in the classrooms, and the teachers don't want them singled out. She continued that they have had success in teaching reading by working with music. She continued that they do not have a charter elementary school in the community with which to compare. She pointed out that a charter school can choose their students, and if the student can't master the academic material, they can be asked to leave, whereas public schools cannot do that.

Upon motion of Council Member Knapp, seconded by Council Member Govin, **RESOLUTION NO. 144-09** was **ADOPTED**, awarding, in accordance with the Program's guidelines, 28 School Improvement Grants, in a total amount of \$14,618.70; payment for said grants to be made from account 001-1021-511.82-21. Vote on the motion being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting "aye," no "nay."

Proposed Ordinances for Consideration and Action:**1. Zoning Reclassification – 8781 Orange Leaf Court – Laurel Oaks Apartments.**

Following **SECOND** and **FINAL** reading, by caption, upon motion of Council Member Govin, seconded by Council Member Fernandez, **ORDINANCE NO. 1259** was **ADOPTED** being: **AN ORDINANCE OF THE CITY OF TEMPLE TERRACE, FLORIDA, REZONING PROPERTY LOCATED ON THE EAST SIDE OF DAVIS ROAD AND THE NORTH SIDE OF OLD TEMPLE TERRACE HIGHWAY, LEGALLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF, FROM ZONING CLASSIFICATION PD-H (PLANNED DEVELOPMENT) – HILLSBOROUGH COUNTY, TO ZONING CLASSIFICATION PD (PLANNED DEVELOPMENT) – CITY OF TEMPLE TERRACE, TO PLACE THE APPROPRIATE CITY ZONING DESIGNATION ON SAID PROPERTY; PROVIDING FOR AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING A SEVERABILITY CLAUSE, EFFECTIVE DATE, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.** Vote on the motion for adoption being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting “aye,” no “nay.”

2. Zoning Reclassification – 8713 Temple Terrace Highway – Point Plaza.

Following **SECOND** and **FINAL** reading, by caption, upon motion of Council Member Fernandez, seconded by Council Member Govin, **ORDINANCE NO. 1260** was **ADOPTED** being: **AN ORDINANCE OF THE CITY OF TEMPLE TERRACE, FLORIDA, REZONING PROPERTY LOCATED ON THE SOUTH SIDE OF TEMPLE TERRACE HIGHWAY AND THE NORTHWEST SIDE OF HARNEY ROAD, BETWEEN DAVIS ROAD TO THE WEST AND MORRIS BRIDGE ROAD TO THE EAST, LEGALLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF, FROM ZONING CLASSIFICATION PD-MU (PLANNED DEVELOPMENT MIXED USE) AND I-PD1 (INTERSTATE PLANNED DEVELOPMENT) – HILLSBOROUGH COUNTY, TO ZONING CLASSIFICATION PD (PLANNED DEVELOPMENT) – CITY OF TEMPLE TERRACE, TO PLACE THE APPROPRIATE CITY ZONING DESIGNATION ON SAID PROPERTY; PROVIDING FOR AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING A SEVERABILITY CLAUSE, EFFECTIVE DATE, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.** Vote on the motion for adoption being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting “aye,” no “nay.”

3. Voluntary Annexation – M & B Products, Inc., 8601 Harney Road.

Council then heard **FIRST** reading, by caption, of a proposed ordinance, being: **AN ORDINANCE OF THE CITY OF TEMPLE TERRACE, FLORIDA, PROVIDING FOR THE VOLUNTARY ANNEXATION OF FOUR PARCELS OF REAL PROPERTY AND THE ABUTTING RIGHT-OF-WAY ON HARNEY ROAD, LYING WITHIN THE UNINCORPORATED AREA OF HILLSBOROUGH COUNTY, GENERALLY LOCATED FRONTING THE SOUTH SIDE OF HARNEY ROAD, WITH AN ADDRESSABLE LOCATION OF 8601 HARNEY ROAD AND THE ABUTTING RIGHT-OF-WAY ON HARNEY ROAD, AND AS LEGALLY DESCRIBED IN EXHIBIT “A,” ATTACHED HERETO AND MADE A PART HEREOF; REDEFINING THE CORPORATE BOUNDARIES TO REFLECT SAID ANNEXATION;**

PROVIDING A SEVERABILITY CLAUSE, EFFECTIVE DATE, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

There was no Unfinished Business before the Council for consideration and action.

City Manager's Report:

The City Manager asked Leisure Services Director James Chambers to report on the first Buddy Baseball program. The Director reported that they just finished the first ever Buddy Baseball League for special needs children; they had 38 players, with assigned "buddies"; there were 40 buddies, consisting of mostly elementary and middle school children. He continued that they formed six teams and played five games, which ended last Saturday with a closing ceremony and awards banquet. He mentioned the various sponsors, which included Mane Center, St. Joseph's Emergency Room Doctors, Avington Care, Inc., Alvarez Roofing, and Tampa Machinery Auction, who all donated money. He noted the Temple Terrace Leaguerettes Girls Softball Program provided the bats, softballs, and helmets, and Dicks Sporting Goods provided some in-kind services and equipment; others providing in-kind services included Vocelli Pizza, McDonald's (Casper's Company), and First Citrus Bank. He concluded it is a great program, and they will start another season in spring, probably in February or March.

The City Manager announced the City has received the Distinguished Budget Presentation Award from the Government Finance Officers Association for the 20th year; he congratulated Finance Director Reichard and the Department Directors for their outstanding work.

The City Attorney announced that for various reasons, including the inability to receive certain information from Counsel for ATS (American Traffic Solutions, Inc.) in the Kelly litigation, the "Out of Sunshine" meeting was cancelled this evening. He requested the meeting be held prior to the next regular City Council Meeting, noting that he and his colleague Kevin Graham would be in attendance.

At this point, Mayor Affronti called for a motion to recess the City Council Meeting for approximately 30 minutes in order to allow the Mayor and Council to convene as the Temple Terrace Redevelopment Agency, noting that the regular City Council Meeting will reconvene immediately following the conclusion of the meeting of the Temple Terrace Redevelopment Agency.

Upon motion of Council Member Neale, seconded by Council Member Fernandez, **RESOLUTION NO. 145-09(m)** was **ADOPTED**, calling for a recess of the City Council Meeting for approximately 30 minutes in order to allow the Mayor and Council to convene as the Temple Terrace Redevelopment Agency, noting that the regular City Council Meeting will reconvene immediately following the conclusion of the meeting of the Temple Terrace Redevelopment Agency. Vote on the motion being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting "aye," no "nay."

The City Council Meeting of November 17, 2009, **recessed** at 7:30 p.m. At 7:44 p.m., Mayor Affronti **reconvened** the City Council Meeting of November 17, 2009, and continued with the next order of business on the Agenda.

New Business:

1. Appointment – River Watch Task Force.

Upon motion of Council Member Govin, seconded by Council Member Knapp, **RESOLUTION NO. 146-09(m)** was **ADOPTED**, appointing Frank Chillura, the sole applicant, to serve a three-year term on the River Watch Task Force. Vote on the motion being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting “aye,” no “nay.”

2. Temple Terrace Redevelopment Agency Recommendations.

Upon motion of Council Member Fernandez, seconded by Council Member Knapp, **RESOLUTION NO. 147-09(m)** was **ADOPTED**, approving the recommendation of the Temple Terrace Redevelopment Agency Resolution No. CRA-125(m), authorizing City staff to make a modification to the Master Developer’s Agreement to provide for the recommendation and request of Vlass Temple Terrace, LLC, in the letter dated November 16, 2009, to eliminate the 60-day response requirement of the City in Section 5.1(b) and work together, in accordance with the other terms of Section 5.1(b), to arrive at a mutually acceptable Community Space Building Concept Plan no later than March 30, 2010, and further instructing staff to work together with the Master Developer to design multi-use facilities that will accomplish the City’s long term objectives while maximizing the efficient, use and productivity of the community use space for the benefit of the City and its citizens, while minimizing the on-going operating expenses of those facilities. Vote on the motion being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting “aye,” no “nay.”

There being no further business to be considered, upon proper motion, the meeting was adjourned at 7:45 p.m.

Joseph A. Affronti, Sr.
Mayor

Alison M. Fernandez, Council Member

Ron A. Govin, Council Member

Ken Halloway, Council Member

Attest:

Mark A. Knapp, Council Member

Melissa E. Burns, MMC
City Clerk

Mary Jane Neale, Council Member