

**CITY OF TEMPLE TERRACE, FLORIDA
MAYOR AND CITY COUNCIL
M I N U T E S**

**Regular Meeting
Tuesday, December 15, 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, December 15, 2009, in the Council Chambers at City Hall.

PRESENT WERE: Mayor Joe Affronti, Sr., Council Members Alison Fernandez, Ron A. Govin, Mark A. Knapp, Ken Halloway, 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, Deputy City Clerk Donna Spano, Assistant City Engineer Michael Hall, Joyce McKenzie, Anthony Zebouni, Bryan Offenhaver, David Flores, Joe Bell, John Rains, Doug Ebbers, David Borchert, Karen Willis-Barrett, M. Rodriguez, C. Diaz, Quentin Barrett, Aaron Barrett, Adam Lare, Kent Lare, Bonnie Lare, 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.

Proclamations, Recognitions, and Special Presentations:

1. Recognition – “New Temple Terrace Branch of the Civil Air Patrol.”

Karen Willis-Barrett, a Greco Middle School teacher, announced the formation of the Temple Terrace branch of the Civil Air Patrol, some of whom are students at Greco Middle School, and asked for Council’s future support. Adam Lare, Cadet Commander Senior Airman, briefly described how they wish to help the community, such as assisting with parking at community events. He mentioned that most of their cadets eventually attend a military academy and end up joining the military. In response to the Cadet’s offer to help at upcoming events, the City Manager stated that Leisure Services Director James Chambers will be their contact person when they would like to volunteer their help.

Minutes of Previous Meetings:

Upon motion of Council Member Halloway, seconded by Council Member Fernandez, and unanimously carried, the **MINUTES** of the December 1, 2009, Council Meeting were **APPROVED**.

There were no persons wishing to be heard on items NOT listed on the Agenda. There were no Public Hearings before the Council for consideration and action. There was no correspondence, communications, or petitions, nor were there any Presentations or Site Plan Reviews before the Council for consideration and action.

Resolutions for Consideration and Action:

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

Upon motion of Council Member Knapp, seconded by Council Member Halloway, and unanimously carried, Resolutions **E-1 and E-2** were adopted by consent, as follows:

RESOLUTION NO. 153-09, approving the Mutual Aid Agreement, attached hereto as Exhibit “A” and made a part hereof, between the City of Temple Terrace and the City of Tampa, outlining the respective jurisdictional law enforcement responsibilities.

RESOLUTION NO. 154-09, approving the Mutual Aid Agreement, attached hereto and made a part hereof, between the City of Temple Terrace and the University of South Florida, outlining the respective jurisdictional law enforcement responsibilities.

Proposed Ordinances for Consideration and Action:

1. **Comprehensive Plan Amendment – Capital Improvements Element Annual Update.**

Following **SECOND** and **FINAL** reading, by caption, of the proposed Ordinance, Mayor Affronti called for comments from the public and from Council, of which there were none.

Upon motion of Council Member Knapp, seconded by Council Member Govin, **ORDINANCE NO. 1263** was **ADOPTED** being: **AN ORDINANCE OF THE CITY OF TEMPLE TERRACE, FLORIDA, AMENDING THE CITY’S COMPREHENSIVE PLAN, BY AMENDING THE CAPITAL IMPROVEMENTS ELEMENT FOR THE ANNUAL UPDATE OF THE CAPITAL IMPROVEMENTS ELEMENT TO THE SCHEDULE OF PROJECTS FOR FY2010-FY2014; 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.”

Unfinished Business:

1. **56th Street Corridor Improvement Project.**

Mayor Affronti called on the Public Works Director to update the Council before hearing from those requesting to speak on the topic. The Public Works Director briefly reviewed, from two Council meetings ago, where staff recommended rebidding the 56th Street Corridor Improvement Project. He stated that after hearing from the second bidder, Council directed staff to go back and recalculate the quantities. He explained there were mistakes made by a consultant, and when they recalculated the quantities, Pepper Contracting became the low bidder. He distributed spreadsheets to the Council to clarify the issues to which he was referring.

The Public Works Director commented that when the bids were opened, he and his staff did a cursory review and several traffic items stood out, namely barricades, signs, and lights. He expressed his concern that the low bidder submitted an unbalanced bid; they were significantly higher than the other five bidders, which raised a “red flag,” causing him and his staff to review and recalculate everything. He continued that their consultant erred significantly in the quantities; it was an oversight. When they incorporated the new quantities, he said it changed the outcome in terms of the low bidder. He referred the Council to the last page of the Summary of Unit Bid Prices, pointing out the column on the left represents the original bid and the right column represents the cost resulting from the revised quantities. He noted the low bidder, Pospiech, goes from \$3.488 million to \$3.545 million, while Pepper Contracting goes from \$3.515 million to \$3.518 million. He added some other minor quantities were changed, explaining that once they found the mistake in quantities, they asked all of their subcontractors to look at their quantities and they adjusted them all accordingly. The Public Works Director summarized the primary problem was with the traffic control items.

The City Attorney interjected that before this matter came before Council two meetings ago, the Agenda item prepared by the Public Works Director, as part of the Council packet, raised the issue with respect to certain line items in the Pospiech bid; as a result of that, the Public Works Director brought the issue to the consulting engineers and asked them to re-evaluate certain line items in the bid documents. He asked the Public Works Director to explain to Council why certain line items changed significantly, so Council will understand why corrections to those line items were necessary.

The Public Works Director responded that several of the traffic control items are bid “per each per day” through the length of the project, such as maintenance of traffic, barricades, lights, etc. He continued that part of the problem is that during the course of bidding the job, 60 days were added to the contract, based on a pre-bid meeting City staff had with the contractors, who felt they needed more time; therefore the contract went from 300 to 360 days. He commented the oversight came to light, when he spoke with the City’s consultant concerning signs and barricades that were needed on “side” streets; when all those signs and barricades are put back in with the lights, the quantities changed significantly. He said it was an oversight on the consultant’s part, and although no one pointed it out to them during the bidding, it resulted in one bid being significantly different from the other five, which is why he believed it was an unbalanced bid.

The City Attorney asked the Public Works Director to describe the significant line items in terms of the engineers’ estimate, what the other bids are, and the Public Works Director’s analysis of those two line items.

The Public Works Director referred the Council to the first page of the Summary of Unit Bid Prices. Relative to Item No. 0102741, Barricade, Temporary, Types I, II, DI, VP & Drum, the Director pointed out that Pospiech bid \$2.00 each, while the rest of the contractors’ bids ranged from \$.22 to \$.25. He noted the engineer’s estimate was \$.20 each. On the work zone signs, he said the engineer’s estimate was \$.30 each, Pospiech bid \$1.00, and the other contractors’ bids ranged from \$.25 up to \$.35 each. He briefly mentioned other line items, such as the high intensity lights, but he said the differences were not as significant.

The City Attorney commented that at the Council meeting two weeks ago, when this item was on the agenda, Mr. Rains and Mr. Ebberts spoke on behalf of Pepper Contracting; however, Pospiech Contracting was not present.

The City Attorney advised that Pepper Contracting is represented here by their attorney, Mr. Zebouni; over the last two weeks he has had several discussions with Mr. Zebouni and with Mr. Rains' firm, in order to understand the legal arguments that both parties are making on behalf of their clients. The City Attorney said he summarized his understanding into a Memorandum, which he provided to the City Manager this morning; copies were provided to Mr. Rains and Mr. Zebouni. He suggested that if Mr. Rains and Mr. Zebouni believe the Memorandum does not accurately summarize the arguments they are making on behalf of their clients, tonight would be an opportunity for them to explain their arguments. Because the City Code does not have set procedures for a bid protest, the City Attorney recommended, out of fundamental fairness, that since the Council heard one side of the story two weeks ago, Pospiech be given an opportunity to address the Council.

Bill Barron, Vice President and Assistant Secretary of Pospiech Contracting, stated that during the course of this process they were not given the opportunity to present information to the Council relative to their bid. He noted that David Borchert, their Chief Estimator, will explain details of the quantities and how they interpreted the specifications. He commented that the last information he received from the Public Works Director was a letter stating that the project was going to be re-bid, which is why they were not here two weeks ago. He said they believe their bid was fair, based strictly off the FDOT standards and specifications; they do not believe they had an unbalanced bid. He concluded by reiterating their bid was a fair and conforming bid, and that they should be awarded the contract.

Anthony Zebouni, Attorney for Pospiech Contracting, addressed the Council, asking them to look at the issue from the "outside" from a fairness standpoint. He reviewed that on November 5th his client received a notice that all of the bids had been rejected, and the bid bond was attached, which was also done for all of the other contractors; as a result, as of November 5, 2009, there was no bid security on this project. He continued that the contract has a provision that specifically states the quantities that are shown will be used for the basis of the bid; therefore, that is all they can rely on.

Mr. Zebouni said the contract further states there is no guarantee the City will use those quantities, giving the City the ability to add, subtract, or do whatever they wish to do. He explained that in theory, after using the unit prices as stated and as advertised, it is within the City's purview to take out items and contract directly with Bob's Barricades or any other barricade company, which could save the City the contractors' markup and sales tax. He said to that extent, the contract documents provide the City the opportunity to otherwise do what is believed to be in the best interest of the City.

Addressing what is said to be the first mistake, Mr. Zebouni stated that they do not believe the new quantities are correct. He continued that what is extremely unusual, they believe, is when there is something unusual or irregular, generally the Public Works Department will contact the contractor and request to see the contractor's take-offs and how they came up with the unusual or irregular items, to determine whether it is, in fact, correct or not; that really wasn't done. He expressed concern that his client was never advised of any irregularities or given the opportunity to explain their numbers, adding that they are prepared to show how they took off this project and how the numbers they gave are correct, and that by increasing these unit prices, which they don't believe is necessary or accurate, at least not from 13991 to the 46000, and all things being equal, would raise their concern that it is being done merely to manipulate the process.

Mr. Zebouni continued, stating he believes that his client is the lowest responsive, responsible bidder, and prior to November 5th, he does not believe there was any written notification to his client that his bid was unbalanced; the City never asked for anything; the only thing formally that they received was an invitation to bid, and then there was a notice that all the bids had been rejected and all the bid bonds were returned. He remarked that now they understand that quantities are wrong and further, that the City has accepted a return of a bid bond by a bidder, which is somewhat unprecedented. He added that they could return their bid bond, too.

Mr. Zebouni commented they already have a project with the City and want to have more projects with the City; consequently, they are not here to be contentious or to say things are wrong; however, they still take exception to the fact and can show that their quantities are correct. He apologized this was their first opportunity for input, explaining that normally there is a protest procedure, which can be very informal, without having to go to the City Council; the City doesn't have that here, so this was their only opportunity in the administrative setting to see if they can resolve this amicably. He reiterated that they have still not received anything formally putting them on notice of what his client has done.

Mr. Zebouni asserted that the case law is what is really important, and that all the support that Mr. Rains has provided, and on which they relied, are basically DOT cases. He stated it is important to understand that DOT Division 1 standards are inapplicable, and by the City's special conditions, are expressly excluded. He explained that the DOT does have the term "unbalanced bid" in their contract documents, adding that the City of Temple Terrace does not. He continued, stating that the DOT does have a bid evaluation committee and procedures, which are being used and are part of their policy, have been used since 1992, and are referenced in all of the DOAH cases referenced by the other side; respectfully, the City of Temple Terrace does not. He said the City does not need that degree of sophistication, and does not need to have a multi-thousand dollar software, as the DOT has, for the purposes of highlighting any 5% deviation in any item, then having to come for a determination of whether it is balanced or unbalanced, and then going through a committee for evaluation that brings the parties in. He continued that any cases cited that say there was a reevaluation, in effect, those cases are based on the DOT's process.

Mr. Zebouni stated that he could not find in the City Charter, Code of Ordinances, or bid documents that the City has adopted the DOT process. As a matter of law in the State of Florida, he explained, if a governmental entity undertakes a process which is not in the contract documents or in their Charter or Code, it is determined to be arbitrary and generally not be sustainable. He questioned whether the mistake was their mistake; the allegation is there is some wrongdoing on the part of his client, and basically the case law provided all through the country, including even cases interpreting this outside this jurisdiction, suggests that even if his client's bid was unbalanced, it requires some sort of wrongdoing on their client.

Mr. Zebouni remarked that he wished the Public Works Department would ask to see his client's private papers to show how he came up with the bids; they believe according to the documents, which are Division 2 for the DOT's standard specifications, which are included, they do have the pay applications, and in it, it is 102-13.7 and 13.8. He continued that they believe the numbers as shown again by the City's engineer or designer are incorrect; basically the 20 or 28 cents apiece are subcontractor prices, and Pospiech can show how they came up with their numbers.

Mr. Zebouni rhetorically questioned what protection the City has and whether the City wants to enter into a contract with some lump sum and some unit prices and be taken advantage of. He noted the City's contract does provide a mechanism to prevent that; if they ascertain that there has been a mistake, all they have to do is take those three items out. He said if his client expected to bid well, based on his mop and mobilization, he had no recourse, because in the City's special conditions it says the City has no obligation, based on reduction of the unit prices or units out of the contract, so the City has the guarantees that are there and will be able to contract for what it is that his client is stating that he will do; he will have to provide a payment performance bond. He continued, stating that what the City has done in recomputing the quantities is not something the City has a process for; the City's contract documents specifically say, in Section III, Paragraph 5, that these are estimated quantities, and they will be used to determine the low bidder. Stating they would really like to get the bid, he expressed appreciation for the extra time afforded him to address the Council, and he concluded his remarks by stating that they believe their client is the lowest responsive responsible bidder, and for the City to avail themselves of a process used by someone else and not incorporated in the contract documents or in the City's Charter or Code of Ordinances is problematic and would not be sustained on review.

Doug Ebbers, 8814 Roberts Road, Odessa, Florida, representing Pepper Contracting, commented that in their industry, in which he has been involved for about 30 years, they have bid Public Works projects that have intricate quantities of all types. He said he believes the focus is whether a bidder has tried to take advantage of perceived quantity variances. He continued that the information presented to the Council in written form and by the Public Works Director is that there is only one bidder on this project who took advantage of what were perceived to be quantity variations, which changed the result of the bid. He stated if the prices were not unbalanced, then they would still remain the low bidder, which is what this whole issue focuses on.

Mr. Ebbers commented that the items Mr. Zebouni mentioned that could be taken out are key MOT (Maintenance of Traffic) features of the project, and as a contractor, that is what they do when they set up their work zones; the features are set up as the work progresses and are an integral part of how they approach their project.

Mr. Ebbers reviewed that Council also heard tonight that Pospiech Contracting does not agree with how the quantities have been confirmed by the City's consulting engineer. Mr. Ebbers explained it is "black and white" – FDOT (Florida Department of Transportation) publishes Index 600 Guidelines, which requires that barricades are to be placed on 50-foot centers. He explained they take the length of the job, divide it by 50 feet, and that determines how many barricades are needed. He said it is an easily verified item; the DOT method is a very strict guideline. Mr. Ebbers said it boils down to fairness. He acknowledged the City wants to pay the least amount to have the work performed by a qualified firm. He said Pepper Contracting is the lowest, responsive bidder, and to put the project back out to bid exposes their numbers. In his 30+ years, he said he has only seen a re-bid occur four or five times; re-bids typically are only done if there is a major change in the project from what it was originally bid. He concluded that Pepper Contracting is the lowest, responsive bidder, suggesting that the other bidder was the only bidder that bid that way, suggesting that they attempted to take advantage.

John Rains, 14905 Winterwind Drive, Tampa, representing Pepper Contracting, expressed their belief that the process the City went through when the error was recognized has been fair. He reviewed that he was at the Council meeting when this issue came up and recalled the question was asked whether a call had been placed to notify Pospiech Contracting, which was confirmed as to having been placed. He concurred with the City Attorney's request that Pospiech representatives be given an opportunity to address the Council.

Mr. Rains noted that a letter had been sent to the City from Pospiech on December 7, a copy of which was provided to him (Mr. Rains). Mr. Rains commented that some of the statements made by Mr. Zebouni “ring hollow,” as he believes they could have requested a meeting with the City Engineer to explain their bid.

Mr. Rains continued, stating that while some specifications were read to the Council, others were not, including B-8.1, which clarifies that the City Engineer makes interpretations necessary to fulfill the intent of the contract documents, and B-19.1, wherein the owner reserves the right to accept any bid, which in the owner’s opinion, is the lowest, best, and in the best interests of the owner. He noted the City’s contract is very, very clear; everyone was on notice of this.

Addressing the question about this being unusual or strange, Mr. Rains referred to the case referenced by the City Attorney in his analysis, *Vila & Son Landscaping Corp. vs. DOT*. He said this is a DOT case, which in Paragraph 24 says that it is not unusual for a mistake to be made in estimated quantities. He continued, paraphrasing the City Attorney’s comments relative to the hearing officer’s note that certain verbiage in the DOT’s Standard Specifications is construed to permit DOT to adjust quantities under certain circumstances if it makes a mistake. He said this is exactly what the City Engineer has done here. He said he doesn’t believe they need to find that the bid is unbalanced; he believes they can find that the City Engineer saw “odd” numbers there and decided to go back and check the estimated quantities; the DOT procedures say if they have made a mistake in the estimated quantities, they can correct that, re-tabulate the bids and award the contract to the lowest bidder. He concluded that is what the engineer has done, finding that the lowest bidder with the correct quantities is Pepper Contracting.

David Borchert, 201 South Apopka Avenue, Inverness, Florida, representing Pospiech Contracting as its Chief Estimator, distributed a handout showing highlighted portions from 2007 DOT Standard Specifications, Section 102-13, Basis of Payment, Page 122, which he said is what this project is referenced around. Referring to the red underlined section of the handout, he read aloud the section underlined and said it is very clear how to handle payment for barricade; the cost for labor and equipment is supposed to be included in the unit price for barricades. He said the same thing goes for the work zone signs and the warnings. He directed their attention to Section 102-13.1, Maintenance of Traffic, and the attached bid item breakdown, which reflects one lump sum item; this is where they put all the other costs that are not included in the other unit costs. He admitted that a lot of contractors, as their competitor did, do put their costs to maintain these devices in this lump sum traffic control item. He commented that if they go by the wording in the specifications, that is wrong; the correct way is to spread the cost into the unit prices, which is why their price looks substantially higher than all the other contractors. He added it is very common in the industry and is very easy for a contractor assembling the bids in the rush at bid time to put the cost in that lump sum and put the cost to rent the barricade per day (20 cents or so) in the unit cost.

In regard to the quantities, Mr. Borchert said the main item of contention is the barricades. He reviewed that the new quantity they came up with was 40,000+ barricades per day; their competitor had 30,000+-. He said Pospiech agreed with the engineer’s estimate at bid time, noting that he attached a copy of their estimate. He emphasized this is not the kind of project where there are barricades lined up for miles down the road; they move the barricades as they go, explaining that once the curb is in, the barricade is no longer needed and, therefore, removed. He said that is the reason for the difference and why they can agree with the engineer’s original quantity.

The City Attorney asked to hear the Public Works Director's understanding of the DOT specifications and the revision of quantities. The Public Works Director responded that he cannot speak to the DOT specifications, other than to say that the five other contractors are all reputable DOT contractors and they, along with the City's engineer with the estimate, came up with same unit price. He said he does not understand where Pospiech is coming from with the \$2.00 unit price; he cannot justify it. Regarding the revision of quantities, the Public Works Director said he has to rely on the City's consultant, who went back and looked at it again very carefully, after it was pointed out there may be a mistake, and came back with revised quantities.

The City Attorney interjected that in the past the Public Works Director has explained to him why their numbers are higher and what they explained to the Public Works Director that they missed. The Public Works Director clarified that there were two reasons: 1) they raised the number of contract days by 60 days; and 2) they missed all the side streets. He explained the approaches to 56th Street need barricades warning people of the construction ahead. Expressing regret that the City's consultant is not present, the Public Works Director commented that he trusts what the consultant did when he went back and reviewed the quantities, especially on the segment where they believed there was a problem.

In the interest of full disclosure and fairness, the City Attorney stated, as the documents came in from both sides over the last week, that he made sure both sides received whatever information he received. He explained that he wanted this hearing to be as fair and transparent as possible, in part because this is the City's first bid protest, and the City does not have procedures in place for dealing with bid protests. He noted that many jurisdictions have Code provisions or policies adopted that provide a mechanism, such as a hearing before the City Manager or his designee, so that it would be resolved before it came to City Council.

The City Attorney recommended that the safest thing for the City Council to do, under these circumstances, is to re-advertise and re-bid, because the standard applicable to such a decision is one where the parties would have to show fraud on the City's part in doing that; however, the information Mr. Rains provided gives some basis to support their position. He explained that if they look at the bid and the fact that the City Engineer determined, after speaking with the consultant, that the figures used in the original bid documents were incorrect and if they recalculated the bids based on the new documents, the low bidder becomes Pepper and not Pospiech. He continued that part of the difficulty in rendering some sort of decision to the Council on this issue is that the Code is relatively silent as to how to handle a situation like this. He said the Code Sections in question – Sections 5.550, 5.535, and 5.545 do not address material mistakes in estimated quantities during the bid process; they talk about correcting those issues prior to bid opening and not after bid opening.

The City Attorney stated that the principal authority upon which the City has discretion is in B-19.1 of the bid documents, which provides that the owner reserves the right to accept any bid which, in the owner's opinion, is the lowest and best and in the best interests of the owner. He explained that would be the authority because the City does not have authority in the Code that specifically addresses the circumstances before the Council; notably that same Code provision indicates the owner also reserves the right to reject any and all proposals and to waive any informality in any proposals.

Getting back to the arguments, the City Attorney commented that what Council has heard from Mr. Zebouni today is that the authority provided to the City by Mr. Rains does not apply, because the DOT has certain bid protest procedures and bid review procedures in place that the City does not have.

The City Attorney continued that while Mr. Rains is right to a certain extent, that the City does not have the bid protest procedures in place, the City Attorney said DOT has procedures about running their bids through computer programs and determining whether or not they have unbalanced bids; the City's Code does not address that, but instead, the City Engineer reviewed the bid documents provided to the City by the various contractors, and using his own judgment, determined he thought there was a problem. The City Attorney said that is not something that is specifically provided for in the City's Code.

The City Attorney stated that he tried to find some language that applied B-19.1 to a situation similar to that which is before the Council tonight, but could not. He noted there is one case described on the last page of the Memorandum that makes reference to a DOAH decision in the *Vila & Son Landscaping* Case, where the hearing officer referenced certain language in the DOT's Standard Specifications for Roadway and Bridge Construction. He said there is language in the City's Bid proposal on page D-3.5 that talks about increasing and decreasing during the process of construction, without changing the unit price bid, but does not specifically indicate the City can do that during the bid process. While the DOAH Case that Mr. Rains provided to the City does have language, the 2nd District Court of Appeals is the appellate court that controls this jurisdiction; what the 2nd District Court of Appeals says is law to the City of Temple Terrace, but a DOAH decision is not binding to the City. He explained it is "persuasive precedent" that the City does not have to follow; it is essentially a decision made by a knowledgeable hearing officer who handles these cases on a regular basis. He advised that the language referenced in the *Vila* opinion is similar, in certain respects, to the verbiage found in paragraph 5 of the Special Instructions to Bidders.

The City Attorney concluded that the bottom line is the standard applicable to the rejection of bids is something that he would make a decision to re-advertise and re-bid, which is something that would be almost impossible for either of these parties or anyone else to attack. He said the standard that is applicable to decisions to award bids provides municipalities with substantial discretion in awarding contracts, which isn't necessarily the case in other states; municipalities have wide discretion in soliciting and accepting bids for public improvements, and its decision, when based upon an honest exercise of this discretion, will not be overturned by a court, even if it may appear erroneous and reasonable persons disagree; if the discretion is abused, however, when a municipality violates its own Code and/or bid documents, and essentially the argument they have heard from Mr. Zebouni, is that the City's Code and bid documents do not provide the City with the ability to correct the quantities and recalculate based upon corrected quantities; he is correct, there is nothing in the bid documents or the Code that specifically says the City can do that. He explained that is where he gets back to the language in B-19.1 of the bid documents he read to them earlier that talk about the City's ability and the owner's or City's opinion to accept any bid which is the lowest and best and in the best interest of the owner. He said that would have to be the principal authority if he argues this before a court, as to why the City awarded the bid to Pepper and not to Pospiech. He apologized for being unable to offer a short and concise answer, stating that was the best analysis he could give them.

Council Member Knapp questioned the City Engineer as to whether the errors in the quantities in the bid that the City sent out were significant or insignificant.

The Public Works Director responded that in quantity, they were large, but in terms of the overall project, not a high percentage.

In response to Council Member Knapp's question concerning the 60-day timeline difference, the Public Works Director said when they are counting the days for barricades and lights, the original contract was for 300 days; however, in the pre-bid conference with all the interested bidders, one concern expressed was that there was not enough time. Therefore, he said among them, they determined to add 60 additional days. He said when they did that, they did not adjust the quantities, adding it was compounded by the fact that they left out those approach streets. He said they found some other items, when everyone looked at them, which were off a little, but everyone's prices were pretty close.

Council Member Knapp commented that if they looked at all of the contracts, item-by-item, they would find there are many different ways to "skin a cat"; where they put their costs and where they account for them, as he read in one of the letters from one not wanting to be penalized for front-loading the contract - they were referencing the mobilization. He said he can understand the more concise they write their bid, the numbers appear to be higher on the smaller items, which is standard in the industry. He commented that he is not comfortable, now that the numbers are public, that when they take into consideration the City's changes and alterations in quantities, the difference on a project of \$3.5 million is less than 5% or \$30,000 or so; with that in mind, he said he would recommend it is in the City's best interest to reject all bids and put the project out for re-bid.

A **motion** by Council Member Knapp, seconded by Council Member Fernandez, to reject all bids and put the 56th Street Improvement Project out for re-bid was **defeated** by a vote of two to three, with Council Members Halloway and Knapp voting "aye," and Council Members Fernandez, Govin, and Neale voting "nay."

Prior to the vote on the above motion, Council Member Govin asked for clarification on the motion that was adopted at the November 17, 2009, Council Meeting on this topic. The City Attorney read the motion that was adopted on November 17, 2009, and summarized it basically refers the matter back to staff for further analysis. The City Attorney explained that Council has heard arguments both sides, City Engineer's analysis from the engineering side, and his analysis on the legal side. He said he doesn't believe the legal analysis would be any different a month from now, if he were to spend a lot more time researching the issue. He concluded there are some "holes" in the City Code; however, the bid documents provide some direction as to how to handle the matter. He opined the City has no authority that is directly on point, although there are some persuasive arguments.

Council Member Fernandez, who had seconded the above motion only for the purposes of discussion, stated she has concerns about fairness in putting the project out for re-bid when all the figures from the original bids have been made public and everyone now knows every line item; however, the City is on a timeline with regard to funding. She said she has significant concerns with the quantities of the items in question, and that the person who prepared the quantities for the bid isn't here to answer their questions. She expressed concern that they have two credible parties saying two different things on quantities, but no third party expert; therefore, there is no way to verify the quantities.

Council Member Knapp commented the consultant prepared the estimates, and the bids were prepared off of that consultant's estimates. He concurred that he doesn't like the idea of having to go out to re-bid either, but he sees no other fair solution.

Council Member Knapp explained that given the original quantities, if nothing were to change, the original apparent low bidder was Pospiech; the City found mistakes in its estimation of quantities, changed them, and instead of sending it back to the contractors, telling them the quantities have changed, and asking them to re-bid, the City extended out the numbers for them, changed their bids, and said "here it is." He said that is problematic to him, because the City, by doing that, has now manipulated or changed who the low bidder is.

Council Member Fernandez commented that if they go forward, choose the contractor, and the quantities are too low, the actual cost of the project will come out higher than originally anticipated; the true cost of the contract is the actual quantity needed.

Council Member Knapp interjected that the City gave them the quantities needed, and that is where he has the problem. He continued that the contractors based their original estimates off the quantities the City told them were required; the City then changed the quantities to re-evaluate their bids and did not send that back to the bidders to allow them to change their bids. He said it would have been much easier had the difference in the contracts been more significant after the City made the changes, but the difference in the numbers is not significant at this point, even after the correction was made. He concluded that unfortunately for *everyone*, the only fair way, in his opinion, since the City gave out a faulty scope of work, is to reject all bids and send out the corrected scope of work for re-bid.

Council Member Holloway said he believed the issue was the quantities, and he questioned, based on the City Attorney's comments, whether the City can adjust those quantities in midstream during the bid process.

The City Attorney responded there is nothing in the City's Code or bid documents that specifically says the City can change it. He continued that the language they have says they can award the contract to the party, in the City's opinion, whose bid is the lowest and best and in the best interests of the owner. He added that he does not know how a court will interpret that language or whether or not a court is going to apply that language to the circumstances of the City's case; to a certain extent it is a "crapshoot," but a crapshoot with a standard that gives wide discretion to cities to act in the cities' best interest.

Council Member Holloway questioned the City Attorney's statement that it is legally defensible to re-advertise and re-bid the project.

The City Attorney responded that if the City does re-advertise and re-bid and one of the parties wanted to sue the City to stop that from happening, they would have to prove fraud on the City's part. Given the testimony by the Public Works Director, the fact that the City went back to its consulting engineer, who came back with significantly different numbers on certain line items, given the lack of any specific direction in the Code as to how to proceed under these circumstances, and the other things they have heard tonight, if the Council decided to reject and re-advertise, in his opinion, he believes the chance of there being a lawsuit would be slim, because both of these attorneys are very familiar with what the standard applicable to that decision would be; if there was a lawsuit, he would almost guarantee the City would win.

Council Member Govin said he believes it is totally wrong to go back and re-bid and expose the winning bidder's prices. He said they argued this once before, and he is not going to argue it again; he cannot vote to re-bid.

Mayor Affronti summarized that if they do not vote to re-bid, the Council will have to agree to award the contract.

The City Attorney commented that some decision tonight is in everyone's best interest; coming back would only delay the process. Relative to Council Member Fernandez' comments, he said it would be handy to have the consulting engineer here to explain how he came up with different figures, adding that the Public Works Director also explained the 60-day extension of the time period in the contract would account for some of that. He said he also understands from the Public Works Director's comments that the consulting engineer did not take into account barricades for side streets. He concluded if delaying this for two weeks to have the consulting engineer come back is something that will weigh heavily in their decision, that is something they can certainly do.

Mayor Affronti questioned the Public Works Director as to whether he is in total agreement with the consulting engineer as to the number of barricades that are needed and the other items in question.

The Public Works Director responded affirmatively, adding the consulting engineers have done a lot of FDOT work, and he would be surprised if they were to say anything different from what he (the Public Works Director) presented tonight.

Council Member Fernandez said if the consulting engineer was here, she would ask why they have a contractor saying they don't need that number of barricades.

The Public Works Director said he would have to question how that contractor is coming up with his numbers when the original quantities were based on 300 days and they went to 360 days, but the contractor stayed with the same quantity.

Council Member Fernandez reiterated that is what she would need to know. She said she does not agree with the re-bidding, adding she is very uncomfortable with that, and it seems intrinsically unfair. She commented that the other issue is there is no decision tonight that will make everyone happy. She said it is unfortunate the City had a flawed bid document, but believes the City has had a pretty good track record so far.

Council Member Knapp directed attention to the first two line items of the extended prices on the Summary of Unit Bids of the two contractors represented. He said there are huge discrepancies of mobilization and the maintenance of traffic between those two; Pospiech's numbers are significantly lower than Pepper's numbers on those two top line items. He explained that when the estimator is preparing his estimate, he could easily account for labor costs for moving these signs, etc., in his maintenance of traffic number. He remarked the Council doesn't know exactly where an estimator will put their line items; all the Council can do is look at the bottom dollar line.

Council Member Knapp continued that when this was presented to Council the first time, Pospiech's number was significantly lower; however, there was concern on staff's part that there were quantity issues. He said staff gave it back to the City's consultant, who changed a significant amount of the scope of work, and then basically rewrote their bids for them. Explaining the problem he has with the process, he said if he is the contractor he is not interested in someone rewriting his bid; he would like the opportunity to rewrite it himself.

Council Member Knapp concluded his point is that he does not like the process, because in rejecting all bids and going back out to bid with the new quantities, they are revealing everyone's quantity prices to those who say they want to bid, but he does not have another fair option available.

The City Attorney confirmed the Summary of Unit Bid Prices has been given to both parties and is public information.

At this point, the vote was taken on the above motion [from Page 10] to reject all bids and re-advertise, which failed by a vote of two to three; Council Members Fernandez, Govin, and Neale cast the dissenting votes.

With the motion to re-advertise and re-bid having failed, the City Attorney clarified they have a contract that needs to be awarded. Commenting that the Council has the analysis of the engineer that was provided to them, he said the appropriate motion at this time, if they deem it appropriate to utilize the corrected quantities provided to the City by the City's engineering consultant and award the bid to the lowest responsible bidder utilizing the corrected quantities, the lowest responsible bidder utilizing the corrected quantities would be Pepper Contracting and not Pospiech Contracting.

The Public Works Director interjected that prior to coming to Council with a recommended bid award, he has to give the bid analysis to FDOT, who has to review it because the City has a LAP (Local Agency Program) agreement with them. He explained that when he informed them he was planning to come to Council with the recommendation to reject all bids and re-advertise, FDOT supported that; however, after the November 17, 2009, Council Meeting, when Council gave him direction to recalculate the bids and he prepared the spreadsheets, he called FDOT and wrote them a letter, stating that based on Council's instructions, he submitted the new spreadsheet, as a bid analysis, to FDOT.

The Public Works Director read aloud the response from FDOT, wherein DOT stated they reviewed the documents supporting the City's desire to award the referenced project to the second low bidder, Pepper, due to an unbalanced bid by Pospiech, and concur with the contract award to Pepper, taking note of the City's LAP Certification Statement in Section 337.11, Florida Statutes, regarding FDOT contracting requirements as adhered to. He continued, stating that contrary to the gentleman's statement that the City does not have to abide by FDOT, the City has an agreement with FDOT; according to Paragraph 2.01 in the LAP agreement, it states that the project will be performed in accordance with all applicable department procedures, guidelines, manuals, standards, and directives as described in the department's Local Agency Program Manual, which by reference is made a part of the agreement as if fully set forth therein. He summarized it is in the City's LAP agreement that the City *does* have to follow FDOT, and FDOT does have to review the City's recommendation and bid analysis.

The Public Works Director concluded that he is not trying to make a decision for the Council, but is just giving them the facts; when Council directed him to recalculate the bids, FDOT supported that.

The City Attorney clarified that Public Works Director Motta's point is that FDOT supported rejection and re-advertising; the FDOT indicated it would support awarding the contract to Pepper, adding the FDOT had to approve and did approve the initial bid package prepared by the City. He stated the FDOT will not be a party to a lawsuit if the City is sued in this case.

The City Attorney explained that while the FDOT has been very agreeable to the City, and he does not disagree with any of the responses received from them, a letter from the FDOT is not something that a Court has to take judicial notice of; it would be something the City would attempt to get into evidence. He concluded that the bottom line is that the FDOT letter does not change the analysis he has provided to the Council.

Reviewing that Council has already voted not to re-bid, Mayor Affronti called for a motion to award the contract to one of the two contractors.

Council Member Halloway questioned whether the recommendation was to recalculate the quantities and bottom line and award the contract to the lowest bidder.

The City Attorney clarified that the direction given to City staff by the Council, at the Council Meeting on November 17, 2009, was to perform an analysis of the quantities in the bid documents. He explained the spreadsheet provided to Council by the City Engineer, which is based upon the corrected quantities from the City's consulting engineer, indicates that if the corrected quantities are applied to the unit prices provided by the bidders, the low bidder becomes Pepper Contracting and not Pospiech Contracting. He said if Council wants to apply the results of the new spreadsheet, the appropriate motion would be to award the contract to Pepper Contracting, based upon the re-calculation of the bids utilizing the consulting engineer's corrected quantities.

A **motion** by Council Member Halloway, seconded by Council Member Neale, to award the contract to Pepper Contracting, based upon the re-calculation of the bids utilizing the consulting engineer's corrected quantities, was **defeated** by a vote of two Council Members voting "aye," and three Council Members voting "nay", with Council Members Fernandez, Govin, and Knapp casting the dissenting votes.

Prior to vote on the above motion, Council Member Govin questioned whether the City staff would do anything to the documents other than change the numbers on a re-bid, leaving all of the "open holes" on the bid documents. The City Attorney responded that if they were to re-advertise and re-bid the project, they are not bound to use the same bid documents; the recommendation would be to revise the bid documents to include certain procedures and certain language to close some of the "holes" that he has described to them. He said they would have corrected quantities, and they could include language in the bid documents to provide additional authority to the City to do things, so everyone would understand how the evaluation would take place on the re-bid.

Council Member Govin commented that opens up another alternate motion; however, there is still a motion on the floor.

Council Member Knapp said he wanted to make certain everyone was perfectly clear as to why he made the original motion. He explained the City made the change in the scope of the work and then re-calculated the bidders' numbers for them; if there was no change in the scope of the work, Pospiech was the low bidder; however, with the recalculation, they are no longer the low bidder. He said that was why he strongly believed that, although he is against it in principal, the only fair thing to do is to completely re-bid the project with the corrected quantities, since it was the City's mistake in the first place with the incorrect quantities, adding he doesn't believe it is the City's "place" to recalculate peoples' bids for them.

Council Member Fernandez commented that, based upon their discussions from the Council meeting four weeks ago when this topic was discussed, one of her concerns with re-bidding is that it seems to penalize contractors who took it upon themselves to analyze quantities and build higher, correct quantities into their bid.

There was disagreement with her comments among those present; Council Member Knapp interjected that was the Public Works Director's conversation and comments. The Public Works Director remarked that no one notified the City that they believed the quantities were wrong, adding that the City's contract documents state that if a discrepancy is noted, the bidder should advise the City.

Council Member Knapp confirmed with the Public Works Director that no one, regardless of what their numbers were, notified the City. Council Member Knapp concluded that it was, therefore, a fair playing field, and if the quantities did not change, it would have been awarded to Pospiech; however, the City changed the scope of work because the City's consultant said the quantities listed in the bid documents were incorrect.

Understanding it is a public document, Council Member Fernandez asked whether there was a way to keep the previous bid information sealed if they re-bid the project, to which the answer was "no," because the information is already out.

At this point, the vote on the above motion [from Page 14] was taken, which failed by a vote of two to three, with Council Members Fernandez, Govin, and Knapp casting the dissenting votes.

Council Member Fernandez offered to make a motion to reject all bids and re-bid the project, with the caveat to rewrite the bid documents to ensure every eventuality is taken care of. The City Attorney responded that while he didn't believe he could necessarily ensure that, they have recognized that if certain verbiage was included in the bid documents, the City would have very clear direction how to proceed. He said Florida law would allow them to improve upon the bid documents to include certain language to try to close some, if not most, of the "holes" in the City's procedures discussed today and advertise to re-bid this project using the correct quantities.

A brief discussion followed, as to the appropriate motion to proceed with the caveat to rewrite the bid documents. The City Attorney advised that first, a motion by someone on the prevailing side would be appropriate to reconsider the previous motion to reject all bids, re-advertise, and re-bid the project.

Upon motion of Council Member Fernandez, seconded by Council Member Hallway, **RESOLUTION NO. 155-09(m)** was **ADOPTED**, to reconsider the City Council's action relative to the previous motion by Council Member Knapp and seconded by Council Member Hallway, to reject all bids, and re-advertise the 56th Street Improvement Project. Vote on the motion being: Council Members Fernandez, Govin, Hallway, Knapp and Neale voting "aye," no "nay."

Prior to vote on the above motion, Council Member Govin said he disagreed that this is not a new motion, totally separate from the first motion; the subject is the same, but it is full of caveats that the first motion did not include. He opined it does not fall under the rule to require a majority vote of the Council.

The City Attorney acknowledged that Council Member Govin may be right; however, in the event that he is not right, as a matter of insurance, he recommended the Council go ahead with the motion to reconsider Council Member Knapp's earlier motion. Council Member Knapp interjected they could then amend the motion.

Following the unanimous vote on the previous motion, the City Attorney advised Council they could now go back and clarify the circumstances by which a motion to re-advertise and re-bid would occur. He said it is his understanding that some of the Council would support the motion if the bid documents were modified to close some of the "holes" that they have heard tonight relative to this project, and to clarify the circumstances by which the bids will be evaluated, and any corrections in the bid documents will be considered, as part of the bid evaluation process.

Council Member Neale confirmed with the City Attorney that the original motion would be amended to include that direction to City staff. Council Member Fernandez questioned whether a situation, where someone bidding has a difference of opinion in regard to what is specified in the bid documents, would be covered in the bid documents. The City Attorney responded that the existing bid documents already address that, adding that is the point that Council Member Knapp and the Public Works Director were making earlier, that during the bid process none of the bidders notified the City Engineer that they believed the quantities relative to those certain items were wrong. He reiterated how the issue with the quantities was discovered by the Public Works Director when he was reviewing the documents.

Council Member Knapp clarified that the next motion would be to amend the original motion that he had made earlier and that the Council just voted to reconsider their previous action on that motion, which was to reject all bids and re-advertise the project, to include modifying the bid documents.

Upon motion of Council Member Neale, seconded by Council Member Hallway, **RESOLUTION NO. 156-09(m)** was **ADOPTED**, to amend the previous motion to reject all bids and re-advertise the 56th Street Improvement Project to include modifying the bid documents in order to "close some of the holes" relative to the project, and to clarify circumstances by which the bids will be evaluated and any corrections in the bid documents will be considered, as part of the bid evaluation process. Vote on the motion being: Council Members Fernandez, Govin, Hallway, Knapp, and Neale voting "aye," no "nay."

Mayor Affronti next called for a vote on the original motion, as amended by Resolution No. 156-09(m).

Upon motion of Council Member Knapp, seconded by Council Member Hallway, **RESOLUTION NO. 157-09(m)** was **ADOPTED**, rejecting all bids for the 56th Street Improvement Project, modifying the bid documents in order to "close some of the holes" relative to the project and clarifying circumstances by which the bids will be evaluated and any corrections in the bid documents will be considered, as part of the bid evaluation process, and re-advertising the bid. Vote on the motion being: Council Members Fernandez, Hallway, Knapp, and Neale voting "aye," and Council Member Govin voting "nay."

Unfinished Business:

Council Member Hallway read a letter from Terrace Community Middle School, addressed to the City Manager, thanking the City for the grant awarded to them to address reading problems.

Council Member Halloway briefly described the purpose of the grant and the positive improvements in the students' grades, as a result of the program purchased with the grant funds, which was detailed in the letter. He remarked that this is the sort of information he hoped to receive from the schools when they are awarded and use these grants. He further expounded on the specific program purchased with this grant, which does not appear to include compact discs, teddy bears, disc jockeys, or ice cream parties, but simply helps the students learn to read by reading. He questioned why other public schools haven't done anything like this or incorporated this program into their respective programs. He said he would like the other schools to evaluate this program and state why they are *not* using this program or if they *plan* to use the program. He requested an answer from the other public schools, stating that until he receives an answer from them, he will not vote on any other School Improvement Grants from the other public schools that come before Council.

Mayor Affronti suggested this is something they can bring up in the Principals' meeting, noting that he has not seen the letter Council Member Halloway discussed.

City Manager's Report:

The City Manager reported he sent out a suggested agenda last week for their meeting with the Hillsborough County Legislative Delegation. He said he would like Council's input as to whether the agenda covers the majority of items of concern to the Council, and if so, of those attending, who would present each topic to the Delegation. Mayor Affronti suggested the City Manager set that up with the Council Members who are attending.

The City Manager advised that the proposed annexations of the M & B Products and Lovelace properties have reached a snag in terms of potential cost of wastewater treatment with the City of Tampa, which would effectively double their cost of wastewater treatment and, therefore, presents a significant obstacle to moving forward. While they are trying to work through some of the numbers to see if there are alternatives, the City Manager said the annexation process has stopped, and the items will be off the Tentative Agenda until the issues are resolved.

In response to Council Member Knapp's question as to who is currently treating their wastewater, the City Manager responded they are using a spray basin on their own land, adding that the Environmental Protection Commission (EPC) has indicated they will not tolerate that to continue. The City Manager and City Attorney mentioned other alternatives they are looking into. The City Attorney commented he understands their discharge has certain items in it that, under the City of Tampa's surcharge, would essentially double the amount they would be paying for discharging wastewater, which has raised serious economic considerations for them.

The City Manager reviewed that the Council was very gracious to help the business community through extra signage and banners in the past; they also allowed site plans to be continued because the building industry is virtually at a standstill. Stating that both programs are set to sunset at the end of the year, he recommended that Council extend both of those programs through the next calendar year.

Upon motion of Council Member Knapp, seconded by Council Member Govin, **RESOLUTION NO. 158-09(m)** was **ADOPTED**, extending the program that eases restrictions on promotional banners and extending development orders, site plan approvals, construction permits, and other land use applications through December 31, 2010. Vote on the motion being: Council Members Fernandez, Govin, Halloway, Knapp, and Neale voting "aye," no "nay."

Commenting that he has been working with the developer relative to the proposed facilities in the downtown redevelopment area, the City Manager tentatively requested a workshop on January 5, 2010, before the City Council Meeting, to present the proposed plan and receive Council direction. He advised that he would like to prepare a basic Master Plan for the facilities so that Council will know the administration's thought process and be sure they are representing the Council appropriately.

In response to a question as to whether the developer still plans to break ground in March, the City Manager said he has not heard anything to the contrary. Mayor Affronti said he believes it hinges on the Sweetbay lease. The City Manager commented that the administration has offered to attend any meetings with Sweetbay and do whatever they can to help facilitate the lease.

Regarding the Arts Center, Council Member Govin questioned whether the developer has seen what the City had before, to which the City Manager said he believes so, but he would have to verify that to be sure. Council Member Govin said he understands, at this particular time, that is not what the developer wants to come back with; if that is true, he questioned why they couldn't just pick up the work the City had done before, at such an agonizing cost, instead of presenting something different. The City Manager said he believes they would be glad to do that, but it would be an expenditure of funds, including the City's funds; they would like to suggest some alternatives to make it more affordable to the City, based upon different configurations that may be somewhat reduced, but will still meet the City's needs.

Stating that the City's employees have given up a lot in these economic times, along with everyone else, and have stepped up to the plate when the City needed them to do so, the City Manager suggested that the City's employees, be granted Christmas Eve off. He noted that Hillsborough County and the City of Tampa are granting that extra day off for their employees. He recommended that all but Police personnel on duty, Fire personnel on duty, and sanitation crews on duty receive that day off and the other groups just mentioned be given an additional floating holiday to be taken sometime during the next calendar year, so that services are not disrupted, and the same type of benefit is granted to all of the employees.

Council Member Govin asked the cost to do so, to which the City Manager responded no overtime will be authorized, but he acknowledged it is a day of salary. The Finance Director interjected it is about \$70,000 per day.

Council Member Govin confirmed it is a day of labor that will cost the City \$70,000. The City Manager reiterated the only way he could mitigate the cost is by a floating holiday and not authorizing any overtime to make up the time.

Upon motion of Council Member Neale, seconded by Council Member Halloway, **RESOLUTION NO. 159-09(m)** was **ADOPTED**, granting the City's employees, except for Police, Fire, and Sanitation personnel who are on duty, a day off for Christmas Eve, December 24, 2009, with those on duty granted an additional floating holiday to be taken sometime during the next calendar year, in order to not disrupt City services. Vote on the motion being: Council Members Fernandez, Halloway, and Neale voting "aye," and Council Members Govin and Knapp voting "nay."

Prior to vote on the above motion, Council Member Fernandez said it should be noted that it will cost the City \$70,000, but if the employees were not given the day off, they would be at work and be paid; therefore, it is not costing the City an *additional* \$70,000. She said it is a reward, and she is in favor of granting the day off.

Commenting that the City has again received complaints about the amphitheatre, the City Manager called on Code Compliance Director Joe Gross to brief the Council on this issue.

The Code Compliance Director stated the City received some complaints early last week regarding a concert that took place on Sunday evening, December 6, at the Ford Amphitheatre. He said they forwarded the two e-mails that were received to the Hillsborough County Environmental Protection Commission (EPC), which has served as the primary enforcement agency regarding noise issues at this venue. The management at the Ford Amphitheatre advised that this show is the 4th Annual event of this type, and it is sponsored by a local radio station; it was not a tour act, which creates the most difficulty with excessive noise. He continued the EPC mentioned they have been periodically monitoring various shows, but not having had a problem with this show in the past, they were not monitoring this show.

The Code Compliance Director relayed that the EPC advised there were three complaints county-wide, and all were from the Temple Terrace area. He noted there was low cloud coverage that evening and occasionally there is a bounce effect off the River. He said they visited the venue and again expressed the expectation that our residents not be disturbed, adding that the amphitheatre's staff and general manager were apologetic, and said they did not wish to disturb the City's residents and even offered to come relay that message in person. He noted the season is over now. When the new season starts in late February, he said the EPC will be sending crews to monitor the noise levels in Temple Terrace; City staff will also get with the amphitheatre each evening after the first couple of concerts to ensure compliance with the noise levels. The Code Compliance Director said that when a show takes place, and residents are able to detect the noise, residents can call 600-1003 during the concert and send an MP3 voice mail message to the General Manager's Blackberry, so the General Manager can send one of his monitors to check it out. The City Manager noted they will put the number on the City's website.

Council Member Fernandez questioned whether the City has asked EPC if they could install an alarm, such as a noise meter, there. The Code Compliance Director responded that they know they have problems with certain acts and guarantee they will have a monitor there, but it is an in-exact science and is affected by atmospheric conditions, river bodies, etc., but he will pass on the recommendation to them. He concluded that they will have more of a presence in the City to monitor the noise levels beginning in February.

Mayor Affronti commended the Leisure Services Department for a very successful Winter Wonderland last Saturday evening, coordinated by Cori Collins. He also mentioned that MOSI (Museum of Science and Industry) was recently named one of the top five museums in the country, out of 17,000 museums, and received a national medal for the museum and library service. He noted the Leonardo de Vinci exhibit from Italy will be there from February to May, 2010.

New Business:

1. Tampa Bay Regional Planning Council’s Request for Support and Financial Sponsorship.

Council Member Fernandez advised the Council that the resolution is a request for a \$1,000 contribution from the City, to support the Tampa Bay Regional Planning Council (TBRPC) hosting the National Association of Regional Planning Councils Annual Conference in Tampa in 2012, which will bring visitors to the area from all over the country. She said the hope is that the attendees will visit attractions, such as MOSI, and other retail and commercial establishments while attending this convention. She concluded it is a joint effort, with contributions requested from all member jurisdictions, and she believes it would be worthwhile.

Upon motion of Council Member Fernandez, seconded by Council Member Neale, **RESOLUTION NO. 160-09** was **ADOPTED**, approving the request for \$1,000 in support of the Tampa Bay Regional Planning Council hosting the National Association of Regional Planning Councils Annual Conference in Tampa in 2012. Vote on the motion being: Council Members Fernandez, Knapp, and Neale voting “aye,” and Council Members Halloway and Govin voting “nay.”

Council Member Govin expressed concern that the \$1,000 request was not based on a jurisdiction’s size or population. Council Member Fernandez said she believes the amount requested varies according to the population of the jurisdictions. The City Manager proposed the \$1,000 come from the Council Contingency Fund, and the Finance Director confirmed the fund currently has \$10,000, which is not designated for any specific purpose.

Council Member Fernandez reviewed that a few weeks ago the newspaper reported Hillsborough County was hiring a consultant to look at the efficiency of combining water delivery services. She said she wanted to make it clear to the public that the County did not approach the City about combining water delivery. Mayor Affronti mentioned that County Commissioner Jim Norman approached him at a meeting about water consolidation, and that was the last he heard on the subject, adding he believes it is a dead issue. The City Attorney noted that he had a brief discussion with an attorney retained by the County on this issue, who said they were going to run it by the City of Tampa first. He said the City Manager’s office was never contacted about it, so no action was taken on it. He concluded that the idea appears to have gone nowhere.

There being no further business to be considered, upon proper motion, the meeting was adjourned at 8:10 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. Small, MMC
City Clerk

Mary Jane Neale, Council Member