

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

A regular meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 7:30 p.m. by Mayor John A. Buckley.

1. Kenton Michalik, Lighthouse Assembly of God, gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Ed Palmer	Vice Mayor – Dist. #2
	Steven Beltz	Council Member – Dist. #1
	Priscilla M. Poole	Council Member – Dist. #3
	Grace Walker	Council Member – Dist. #4
	Cheryl Palmer	Council Member – Dist. #5
	Loretta Isenberg-Hand	Council Member – Dist. #6
	Henry J. Hill	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Bud Emerson	Assistant City Manager
	Peggy Braz	Planning and Zoning Administrator

Mayor Buckley announced that the applicant for item 19 (Ordinance No. 2000-15) has withdrawn his request.

4. PROCLAMATIONS AND PRESENTATIONS

None.

5. APPROVAL OF MINUTES - Regular Meeting – January 11, 2000

Moved by E. Palmer/Hand for approval. Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mayor Buckley reported that Council received a copy of the City Code Chapters adopted by the City Code Review Committee, Section 3. The Chairman of the Committee, Ed Bradford, is scheduled to make a formal presentation to City Council on February 22. In the meantime, the Mayor recommended each member review the material.

Mr. Hill reported on the meeting held between the water utilities in Brevard and the County Health Director. The county called the meeting to discuss mandatory (boil water) notices and the means by which they are issued. There is a lot of work that needs to be done in this area; however, despite the problems, Melbourne’s efforts were held out as a model on how we go about utilizing all the means available to notify the public. Since the threshold is so low on what could trigger a notice requirement, there will likely be repeats. The goal is to

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

come up with the most effective system.

Additionally, Mr. Hill referenced the year-end budget status report distributed to Council. A budget workshop will be scheduled in late February or March to discuss the 2000-01 FY budget.

Regarding the mandatory utility notices, Mr. Beltz asked about the cost of a county-wide phone calling system. Mr. Hill said it would probably be about \$50,000 for our system alone and he is not sure whether that amount would be tripled or quadrupled on a county-wide basis. The difficulty is isolating the affected areas. Often, the media offers up a broad brush response as opposed to being specific about the areas affected. The phone system will definitely be reviewed as an alternative.

Mayor Buckley added that Melbourne's utility includes 100,000 and there really wouldn't be an effective way to use a phone system.

Mr. Palmer asked if a coordinated effort is being made between the cities and the county for the announcements. Mr. Hill said that is being discussed – a standardized format on wording and how notices are handled. Mr. Hill commended Mike Moore, the City's Public Information Officer, for walking notices to radio stations on New Year's Day as opposed to simply faxing them. This assured they received the attention deserved.

7. PUBLIC COMMENTS

There were no comments.

UNFINISHED BUSINESS

8. ORDINANCE NO. 99-66 (Brockerman Property): (Public Hearing/Second Reading) A request for zoning of C-2 (General Commercial), C-1 (Low Intensity Commercial) and R-2 (cap 10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre) on property located on the west side of Dairy Road and the north side of Palm Bay Road. (Owner/Applicant – F. Brockerman, B. Benson) (First Reading 11/30/99) (Postponed by Council 12/14/99)

Attorney Gougelman read the ordinance by title.

At the December 14 meeting, the applicant asked for this ordinance to be postponed until this meeting. Because he is still negotiating a sales contract, the applicant is requesting further postponement until the February 22 meeting.

Moved by Beltz/E. Palmer to postpone Ordinance No. 99-66 until the February 22 meeting. Motion carried unanimously.

9. ORDINANCE NO. 2000-01 (A&V #231): (Public Hearing/Second Reading) A request to abandon and vacate a 20-foot wide right-of-way easement south of NASA Boulevard

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

between Babcock Street and Apollo Boulevard along the southern property line of Parcel 256. (Applicant – Myles H. Wilkinson) (First Reading 1/11/00)

Mr. Gougelman read Ordinance No. 2000-01 by title. There were no comments from the audience.

Moved by Hand/Walker for approval of Ordinance No. 2000-01. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2000-02 (CU-1999-11/Sunnyside Assisted Living Homes): (Public Hearing/Second Reading) A request for a conditional use to develop a congregate living facility in an R-2 (One-, Two-, and Multiple-Family Residential) zoning district located on the south side of Parkway Drive approximately ¼ mile west of Wickham Road. (Owner/Applicant – Tung Yao Hung/Sunnyside Assisted Living Homes, Inc.) (First Reading 1/11/00)

Mr. Gougelman read Ordinance No. 2000-02 by title.

Mayor Buckley asked the applicant to address the drainage questions raised at the last meeting.

Brian Cale, representing Ron Howse, St. Cloud, explained that the property now drains to the west and south into existing swales. He noted that although they can't say that this project will improve the drainage in the area, they can assure that the project won't make it worse.

Mr. Hill pointed out the following stipulation that has been added to generally address drainage:

Approval of this site plan is not approval of required engineering which includes drainage, fire flow, sanitary sewer, potable water, grading, paving, or any other required infrastructure.

Mr. Cale stated that he understood and agreed with this stipulation.

Mrs. Palmer asked if this item would return to Council for further approval. Mr. Hill said not unless they make a substantial change to the site plan. He noted that the drainage would have to be reviewed and approved by the city and the St. Johns River Water Management District. Also, the county will be involved if they are proposing to use a county drainage structure. This project would be reported to Council on the bi-weekly development report.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Moved by Beltz/C. Palmer for approval of Ordinance No. 2000-02 with the additional stipulation noted. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

11. ORDINANCE NOS. 2000-03, 2000-04, AND 2000-05 (AR-1999-126/CPA-1999-16/Z-1999-889/Fortier Residence): (Public Hearings/Second Readings) Requests to annex, establish low density residential land use, and establish R-1A (Single-Family Residential) zoning on approximately .22 acres located west of Croton Road and north of Aurora Road. (Owner/Applicant – Joane Fortier) (First Reading 1/11/00)

- a. Ordinance No. 2000-03: An ordinance to implement AR-1999-126.
- b. Ordinance No. 2000-04: An ordinance to implement CPA-1999-16.
- c. Ordinance No. 2000-05: An ordinance to implement Z-1999-889.

Attorney Gougelman read Ordinance Nos. 2000-03, 2000-04, and 2000-05 by title. There were no comments from the audience.

Moved by E. Palmer/Hand for approval of Ordinance No. 2000-03. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

Moved by C. Palmer/Walker for approval of Ordinance No. 2000-04. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

Moved by Hand/Beltz for approval of Ordinance No. 2000-05. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Motion carried unanimously.

12. ORDINANCE NOS. 2000-06, 2000-07 AND 2000-08 (AR-1999-127/CPA-1999-17/Z-1999-891/Hornsby Residence): (Public Hearings/Second Readings) Requests for annexation, low density residential land use, and R-1A (Single-Family Residential) zoning on a .20 acre lot located north of Pine Hill Drive and east of Wickham Road. (Owner/Applicant - Roger and Lynn Hornsby) (First Reading 1/11/00)
- a. Ordinance No. 2000-06: An ordinance to implement AR-1999-127.
 - b. Ordinance No. 2000-07: An ordinance to implement CPA-1999-17.
 - c. Ordinance No. 2000-08: An ordinance to implement Z-1999-891.

Attorney Gougelman read Ordinance Nos. 2000-06, 2000-07, and 2000-08 by title. There were no comments from the public.

Moved by Walker/C. Palmer for approval of Ordinance No. 2000-06. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

Moved by Hand/Beltz for approval of Ordinance No. 2000-07. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

Moved by E. Palmer/Hand for approval of Ordinance No. 2000-08. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

13. ORDINANCE NO. 2000-09 (CU-1999-19/Kol Mashiach Synagogue): (Public Hearing/Second Reading) A request for a conditional use for a house of worship on a 2.0-acre parcel located on the southeast corner of Lake Washington Road and Stewart Road. (Owner/Applicant – William Ferrell/Kol Mashiach, A Messianic Synagogue.) (First Reading 1/11/00)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Mr. Gougelman read the ordinance by title. There were no comments from the audience.

Moved by Walker/C. Palmer for approval of Ordinance No. 2000-09. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

14. ORDINANCE NO. 2000-10 (Z-1999-890/McWilliams Property): (Public Hearing/Second Reading) A request to change the zoning on an approximate .589-acre portion of a 60' wide section of a parcel from R-2 (Cap 10) (One- Two- and Multiple-Family Residential with a cap of 10 units per acre) to C-1 (Neighborhood Commercial) located west of U.S. 1 south of Post Road and north of Dixie Way. (Owner/Applicant – River Oaks Partnership) (First Reading 1/11/00)

The attorney read Ordinance No. 2000-10 by title. Mrs. Palmer disclosed that she received a call from a resident on Dixie Way who spoke at the last meeting asking her to continue her position on this item.

There were no comments from the audience.

Moved by Beltz/E. Palmer for approval of Ordinance No. 2000-10.

Mrs. Poole referenced the recitals (whereas clauses) added to the ordinance since first reading. She noted that the agenda report states that the revisions were made to make it clear that the rezoning is not compensation for the FDOT taking of the eastern portion of the property. She believes the clauses conflict with that statement and cited several examples.

Continuing, Mrs. Poole recalled that Mr. McWilliams had a plan in his possession at the last meeting; however, it was not shared with Council. She questioned the date of that plan and asked if Council had a copy.

Mike McWilliams, 1600 W. Eau Gallie Boulevard, stated that the plan is for the one-acre parcel on the north side of the property (the property being considered for rezoning). He stated that it is not a formal plan, rather a preliminary sketch to be used to present to FDOT to obtain an easement for road access. Mr. McWilliams submitted a copy of the sketch to Council.

Mrs. Poole asked what would stop every other property owner along U. S. 1 from making the same claim, especially in light of the statements made in the ordinance.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Attorney Gougelman replied that first, Council has the applicant's testimony and sketch plan furnished as evidence that a depth of 250' is needed. Whether that is the case or not is a factual determination for Council to make. He added that every application for rezoning of property has to stand on its own facts and the configuration of its parcel.

Mrs. Poole commented that Council then has to assume that plans were in place prior to the taking by FDOT. Mr. McWilliams confirmed that they have a plan dated May 1984 which shows that the most efficient use of the site requires 250'. (Later in the discussion, Mayor Buckley asked Mr. McWilliams to submit a copy of that plan as evidence.)

Mrs. Palmer said that at the last meeting there was discussion of a 50' buffer area. She said she never understood whether or not the applicant agreed to that. It was pointed out that the applicant did agree to that and the stipulation is contained in Section 2 of the ordinance.

Mrs. Palmer said this development is adjacent to single-family homes being encroached on by U. S. 1 and the railroad. The area has been the scene of a lot of upheaval and it would behoove us to protect the residents in this neighborhood.

Responding to Mrs. Poole, Mr. McWilliams said the large area of trees will remain along the residential area.

Regarding the wording of the stipulation, Mr. Beltz pointed out that Council was concerned about the buffer on the south. He asked if the wording would also force a buffer area to the west. Mrs. Braz replied yes and said it was the intent that the area adjacent to the single-family residential have a 50' wide buffer.

Moved by Beltz/Poole to amend the stipulation by providing that a 50' wide buffer will be required along any property boundary contiguous with the property zoned *single-family*. Motion carried unanimously.

Mrs. Hand said that neighborhood has been so adversely impacted through the years. The residents have not had a good quality of life; therefore, she cannot support this request.

Since the recitals were added following first reading, Attorney Gougelman recommended Council make the following motion:

Moved by Poole/Walker to add the recitals to the ordinance. Motion carried unanimously.

The question was called on the main motion, as amended. The roll call vote was:

Aye: Beltz, Walker, E. Palmer, and Buckley

Nay: Poole, C. Palmer, and Hand

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Motion carried.

15. ORDINANCE NO. 2000-11 (CU-1999-13/Speedway): (Public Hearing/Second Reading)
A request for a conditional use for an automotive service station on property zoned C-2 (General Commercial) located on the northeast corner of the intersection of U.S. 1 and Aurora Road west of Avocado Avenue. (Owner/Applicant – John W. Holloway/Marathon Ashland Petroleum L.L.C./Leonard Spielvogel) (First Reading 1/11/00)

Attorney Gougelman read the ordinance by title. Mrs. Palmer disclosed that she drove by the site and observed the oak tree.

Attorney Spielvogel, representing the applicant, confirmed for Mrs. Poole that specialty racing fuel is used by boats that require a higher octane.

There were no additional comments from the public.

Moved by Hand/E. Palmer for approval of Ordinance No. 2000-11.

Mrs. Poole questioned how this development would promote the health, safety, and welfare when service stations are noisy and generate fumes. She also pointed out that two service stations are already located at this intersection. Continuing, she noted that several experts have stated that the historic oak tree could live on for several years. Additionally, the applicant submitted a plan, which saves the oak tree, and she believes Council should have the opportunity to review that plan. Mrs. Poole concluded by reciting her favorite poem about trees.

Mrs. Palmer stated that the tree is very beautiful; however, several experts have said it will not live much longer. If the tree were healthy, she would probably not vote for this. But, she is pleased to see that they are going to replace this tree with a lot of others and hopefully they will live and thrive.

Mr. Palmer reported that the property has been vacant for a long time; it has become an area where prostitutes accumulate. Additionally, they have had drug problems in the area. A viable business at this location will be good for the city and will eliminate a problem area. It will be a positive move that will benefit the Eau Gallie section. The majestic oak tree has sustained a lot of damage and is sick; the tree will be replaced by healthy trees.

Mrs. Poole said if the alternate plan, which saves the tree, had been presented, she would have been happy to vote for this project.

The question was called. The roll call vote was:

Aye: Beltz, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: Poole

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Motion carried.

16. ORDINANCE NO. 2000-12 (LDR 1999-09 AND FOC-1999-09/Non-Conforming Sign Regulations): (Public Hearing/Second Reading) A request to adopt changes to the Land Development regulations that require the replacement of non-conforming sign over time within the scenic corridors of the City (Wickham Road, Eau Gallie Boulevard, U.S. 192, U.S. 1, A1A, NASA Boulevard, Dairy Road and Airport Boulevard) (First Reading 1/11/00)

Attorney Gougelman read Ordinance No. 2000-12 by title. There were no comments from the audience.

Moved by Poole/Hand for approval of Ordinance No. 2000-12. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

17. ORDINANCE NO. 2000-13 (LDR-1999-08 AND FOC-1999-08/Impact Fees Exemption for Building Expansion and Redevelopment): (Public Hearing/Second Reading) A request to allow an impact fee exemption for building expansion or redevelopment up to 100% of the existing gross floor area which applies to all lands within the City. (First Reading 1/11/00)

Mr. Gougelman read Ordinance No. 2000-13 by title. There were no comments from the audience.

Moved by Hand/C. Palmer for approval of Ordinance No. 2000-13.

Mrs. Poole pointed out that the ordinance has been modified to clarify when expansion occurs and provide parameters for interpretation of an expansion. Since this has been added, she stated that she would vote for the ordinance.

Mrs. Palmer asked if the change of 10% to 100% means a redevelopment can be up to twice the existing size. Mr. Hill replied that it could be more than that, but an additional fee would not be incurred on the first 100%.

Mr. Hill cited the Ice House as an example. When the building was converted, an impact fee had to be paid for all expansion above 10%. If this ordinance had been in effect, the applicant would have been required to pay for anything above 100% of the previous square footage.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Attorney Gougelman noted that the maker/seconded of the motion would have to include the revision made since first reading.

Mr. Hill noted that the rationale for this is that typically a redevelopment project is located in an area already serviced by a roadway network; therefore, the redevelopment won't necessarily cause a traffic impact.

Mr. Palmer asked in the case of a demolition what would happen if the applicant didn't return in a two-year period. Attorney Gougelman replied that they wouldn't get the impact fee break.

Mrs. Palmer asked why the five-year language is necessary in the ordinance. Following a brief discussion, Mrs. Braz clarified that the intent is not to give the break for an expansion of a new building, but to cover the renovation of an old building. A five-year wait would not apply to the renovation of an old structure.

The maker/seconded included the revised language in the ordinance as part of the motion.

The question was called.

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

18. ORDINANCE NO. 2000-14 (National Electric Code): (Public Hearing/Second Reading) A proposed ordinance relating to building and construction codes; providing for the adoption of the 1999 edition of the National Electric Code. (First Reading 1/11/00)

Attorney Gougelman read Ordinance No. 2000-14 by title. There were no comments from the public.

Moved by Poole/E. Palmer for approval of Ordinance No. 2000-14. The roll call vote was:

Aye: Beltz, Poole, Walker, C. Palmer, Hand, E. Palmer, and Buckley

Nay: None

Motion carried unanimously.

19. ORDINANCE NO. 2000-15 (Strawbridge Avenue Street Name Change): (Public Hearing/First Reading) A request for a street name change of West Strawbridge Avenue

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

to Alex Boyer Lane. (Requested by Vice Mayor E. Palmer) (Postponed by Council 1/11/00)

Mayor Buckley reported that the church withdrew its request.

NEW BUSINESS

20. COUNCIL ACTION RE: Consent Agenda

Moved by Hand/Walker for approval of the consent agenda, items “a – d.”

Mrs. Poole asked for additional information regarding item “b.” She said it bothers her that the damages being assessed to the contractor for being late is \$20,000, yet Gee and Jenson will receive \$13,341.07 of that.

Mr. Hill said this points out that the liquidated damages clause works. There were additional costs and expenses to Gee and Jenson because of the delay. The liquidated damages will more than pay for that amount.

Mr. Ralls confirmed for Mrs. Poole that Gee and Jenson designed the project. He noted that the contractor was late by over 100 days. Some contractors have a difficult time wrapping up a project and it drags out. Liquidated damages get their attention.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Purchase of 52 *SunView™ Mobile Data Systems*, Data911, Alameda, CA - \$257,049.00.
- b. Amendment No. 3 to Gee & Jenson’s contract for Grant Street Wastewater Treatment Plant Improvements Phase IIA, Project No. 9431W - \$13,341.07.
- c. Supplement No. 27 to Continuing Consultant Contract for Engineering Services for Lighting for New Haven Avenue from FECR to Livingston Street - \$15,320.00.
- d. Supplement No. 28 to Continuing Consultant Contact for Electrical Improvements at D. B. Lee and Grant Street Wastewater Treatment Plants - \$23,633.00.

Recessed: 8:47 p.m.

Reconvened: 8:58 p.m.

21. COUNCIL ACTION RE: A request for a Comprehensive Plan amendment to allow the owner to file for an Inconsistent Use Permit for property located at 1618 Guava Avenue. (Requested by Mr. David A. Everitt, Jr.)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Mrs. Braz briefed Council. Mr. David A. Everitt, Jr. requested the density on his property (Lot 13, except the north 50 feet, and Lot 14, Block 27, Village Plat of Eau Gallie) at 1618 Guava Avenue be restored to 15 units per acre. This density was changed in this area from 15 units per acre to 6 units per acre in 1989. Property owners who were made non-conforming by this land use change were allocated six months in which to apply for an inconsistent use. After that time if no application had been received the zoning was changed. In this case the zoning was changed from R-2 to R-2 (Cap 6). Mr. Everitt claims that he was never notified of the opportunity for an inconsistent use.

The property includes approximately .25 acres with a triplex. The triplex is non-conforming because the density exceeds 6 units per acre. It is also non-conforming in a number of other ways. The current requirements for a triplex include 900 s.f. per unit, an enclosed garage for each unit, and a lot that is a minimum of 12,000 s.f. with minimum dimensions of 120 x 100. The current units are 510 and 812 s.f., do not include garages and are constructed on a lot that measures 82 x 132 or 10,824 s.f.

When Mr. Everitt purchased the property in 1988 it was a non-conforming structure, but the density was permitted. The zoning change, which reduced the density to 6 units per acre, was approved on May 9, 1989.

The policy in the Comprehensive Plan is very clear. The window is closed and has been closed for over 10 years. There is no way that we can ascertain if he was personally notified. There is no requirement of Code to make notification but the City does make every effort to ensure all property owners are notified. Also, notification was sent out to each property that was rezoned. It was also advertised by a quarter page ad in the newspaper.

If we revisit the matter for this property owner, Council would probably need to do it for every one who claims that they were not notified. The property was purchased in January of 1988 and the zoning change was not complete until May of 1989.

The property is now a non-conforming use and a non-conforming structure. It may continue to exist in Mr. Everitt's ownership, or to whomever he might sell the property. However, if something should happen to the structure to damage it by more than 50% of the replacement cost at the time of destruction, it could not be rebuilt. At 6 units to the acre, only one dwelling unit could be constructed on a .25-acre site.

It was Council's decision that this area should be restricted to 6 units per acre; if this philosophy has changed the plan should be amended. Should the City Council wish to amend the Comprehensive Plan text, it will be considered a major amendment.

David Everitt, applicant, agreed with Mrs. Braz's presentation and stated that he was never notified. He assured Council that if he had, he would have filed. He noted that the fact that people live in the triplex is an asset and he asked Council to grandfather the inconsistent use.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Mrs. Poole asked for clarification. Mrs. Braz stated that if Council wants to open the window, then a major Comprehensive Plan Amendment would be required and she doesn't believe we can do it for one property without opening it up for everyone else.

Mrs. Poole asked about the number of responses received from this area (when the window was open). Mrs. Braz said probably three or four.

Mrs. Poole noted that the agenda report indicates that it is not a requirement of Code to make notification; however, the backup contains a page from the Future Land Use Element, which indicates that "...the city shall mail a notice to the owner..." Mrs. Braz explained that it is a courtesy notice; it is not sent certified, return receipt requested. Therefore, we have no way of knowing whether or not someone received a notice.

Mrs. Poole asked if the structure was destroyed more than 50% due to fire, hurricane, etc., if the owner could only build back one unit. Mrs. Braz said that is correct. Mrs. Poole said that may result in the property remaining vacant rather than the owner constructing one unit. Mrs. Braz disagreed and pointed out that there are a number of very nice single-family homes in that neighborhood. She pointed out that it is the city's policy to promote single-family homes in this area; that is why the density was lowered.

Mrs. Palmer asked Mr. Everitt when he discovered this situation. Mr. Everitt said he recently found out from a neighbor. He added that he checked with his insurance company and they confirmed that if the structure was destroyed by fire, he could not reconstruct. Mr. Everitt stressed that had he known, he would have filed for the inconsistent use. Continuing, he referenced the duplex (next door) purchased 12 years ago. He said it was a dump and he put \$12,000 into it to make it nice and protect the property next door. He noted that the area is making a comeback and feels he is part of that.

A brief discussion followed about the duplex and Mr. Everitt stated that he was never notified about that property, either.

Mr. Beltz asked if there are other triplexes and duplexes in the area. Mrs. Braz said many. Mr. Beltz noted that they are either non-conforming or the owners applied for the grandfathering. He asked if the intent was to prevent additional units from being built or as units are destroyed, to move the area back to single-family. Mrs. Braz said both. She added that in short, we avoid new ones being built. It will be a long, slow process to change the neighborhood.

Mr. Palmer pointed out that the square footage of the units does not meet our minimum standards. The Code stipulates that the minimum size for a duplex is 900 s.f. and each facility would have to have a garage. If the request were granted, we would be creating more of a problem than what exists now.

Mrs. Poole said many people rent in this area. If we eliminate the units, we will affect a segment of people who have difficulty finding a place to live. She asked if the intent was

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

to get rid of the structures and hope the area upgrades. Additionally, she noted that she has a problem with this since Mr. Everitt was not notified.

Mrs. Braz said it was always the city's intent to remove substandard buildings. The current units are grandfathered until they stop being used for that particular use. Unless something happens, they would continue in their current state.

Mayor Buckley said that although he sympathizes with Mr. Everitt, he has to recommend against issuing the permit. He noted that the use may continue and the hope is that nothing will happen to the structure so that it may continue as is.

Mr. Beltz said he feels the same. He is also worried that if we open up this property to be revisited because of a claim about not being notified, potentially every other owner involved when a notice is sent out could lobby for the same.

Mr. Palmer said the current use is grandfathered so the situation is not detrimental to the owner; therefore, he believes there is no reason to issue the permit.

Moved by E. Palmer/Walker to deny the request. Motion carried. (Mrs. Poole voted nay.)

22. ORDINANCE NO. 2000-16 (CU-1999-20/Melbourne Recycling): (Public Hearing/First Reading) A request for a 28.26-acre extension adjoining the current conditional use on a 40.35-acre site for a landfill/recycling activity located west of Wickham Road on the south side of Sarno Road. (Owner/Applicant – Forte Macaulay Development Company/Gleason Brothers and Company) (P&Z 1/16/00)

Attorney Gougelman read the ordinance. Mrs. Braz briefed Council.

The proposed action is to extend the current conditional use (CU-1997-12) on a 40.35-acre site, for a landfill/recycling activity, to an additional 28.26 acres, adjoining the original site. The property is located west of Wickham Road on the south side of Sarno Road. Council approved the present conditional use in October 1997. The applicant has constructed the facility and is operating on the approved current site. Recycling is occurring and the applicant is now receiving the "green waste" from the Melbourne area under a contract with Brevard County.

The additional site is currently vacant and is located east of the existing landfill. The site has the present landfill on the west, industrially zoned vacant land to the north and east and an industrial subdivision to the south, including a day-care facility. Modifications to the existing canals and road rights-of-way are proposed, and any approvals are contingent upon the receipt of other approvals from Brevard Country, various state agencies and the St. Johns River Water Management District.

The proposed use complies with the minimum lot sizes and building size requirements of the Zoning Code. Landscaping per City Code will be provided on site by preserving existing vegetation or by providing new plant materials. The use is consistent with the

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Comprehensive Plan, will not be harmful to the neighborhood, will not generate excessive noise, fumes, dirt or dust, and does meet all requirements of the Melbourne Zoning Code and Land Development Code.

The Planning and Zoning Board and staff recommended approval subject to the findings contained in the package and the following conditions:

- a. The conditional use extension and the proposed plan of development is subject to the two-page site plan for Melbourne Landfill and Recycling Center, prepared by Jelus Engineering, Inc., of Melbourne, Florida, dated September 22, 1999 and signed and sealed January 5, 2000.
- b. Any change to the site plan will require re-evaluation of the site plan by the City Engineering Department and the Planning and Zoning Department.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes but is not limited to: a) a decrease of 5% of the open space or vegetative areas on site; and b) additional access points to Sarno Road, not shown on the site plan.

- c. Approval of this site plan is not approval of required engineering which includes drainage, fire flow, sanitary sewer, potable water, grading, paving, or any other required infrastructure.
- d. Applicant's site plan notes indicate vacation of the Cortez Street right-of-way, relocation of the L-16 canal, and vacation of State Street. Approvals from all regulatory agencies are required prior to construction of any facilities.

Note: See Council action for revision to stipulation "d."

- e. Vacation of Cortez Street is contingent upon the final platting or deeding of the public right-of-way to replace Cortez Street, east of the site connecting New York Avenue and Sarno Road. Said road shall at least comply with the minimum design requirements for a collector street.
- f. Relocation of the L-16 Canal requires various approvals from Brevard County as well as from the St. Johns River Water Management District per site plan Note #2 and no work may be initiated until those approvals are secured.
- g. An Environmental Impact Assessment is required for the site, and any species determined to be present will have to be addressed per Code and appropriate regulation.

Mrs. Hand asked how high the landfill portion will get. Mrs. Braz said the county's is at 80'; however, this landfill will be limited to 40' – the height restriction for the area.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Mrs. Palmer asked what type of material would be in the mound. Mrs. Braz recommended the applicant answer that question. Also, Mrs. Braz pointed out the current location of the L-16 Canal on the map. She noted that this is very preliminary and if approved by Council, they will look further into how this will all be put together.

Mr. Palmer asked for clarification on the relocation of the canal and the vacation of Cortez and State Streets. Mrs. Braz said State Street is a “paper street;” it does not exist. If it is vacated, then it will become their land, will remain undeveloped, and will be used as a buffer.

In response to Mrs. Poole, Mrs. Braz confirmed that the vacation requests would have to return to Council for approval.

Mrs. Poole stated that she wants a definitive plan on rerouting the canal. Mrs. Braz said they can't say at this time. Even if the city approved this, it would still require county and SJRWMD approval. Mr. Hill confirmed that this is not a city canal; they would have to get the county's permission.

Hugh Evans, 1688 W. Hibiscus Boulevard, applicant, stated this plan relates only to the conditional use. He stated that the next step would be the platting of the industrial subdivision to the east of this property. The industrial subdivision has a “paper street”. The proposal is to vacate Cortez Street and replace with a new street running from New York Avenue to Sarno Road when they bring in the plat. State Street would either be left as right-of-way, or vacated and then not developed to be used as a buffer.

Regarding the canal relocation, the canal is handling a little water off Sarno Road, but basically it is the headwater to the larger canals to the south. The county would like to expand this either through their property or re-routing to the north and east boundary of the property. The change would be equal to or greater than what is currently there.

Mr. Palmer asked why they are proposing to relocate the canal. Mr. Evans showed the existing facility on the map and the future site they will be connected to. If the county decides they don't want to relocate, they would create a culvert and bridge to connect the two. They are not sure what they will do at this point; however, they do know that the county would like to expand this canal.

Mrs. Palmer asked what will go in the berms of the recycling facility and a definition of class three material. Mr. Evans said class three material deals with non-household waste. Debris from construction sites or clearing operations would be brought in. Right now, they are sorting out the hardwoods, grinding, and selling as mulch. The other material is laid out in rows and turned into top soil or used for other agricultural uses.

Mrs. Palmer expressed concern about demolition material and asked if it would contain asbestos. Mr. Evans said potentially there could be toxic material. Currently, paint

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

buckets are pulled out and taken to the county facility. He noted that they are not licensed to take anything “unfriendly.”

Mrs. Palmer said she is concerned about the people living close to this site being subjected to dust. Additionally, she is concerned with the drainage. She noted that she will visit the site.

Tim Jelus, 1688 W. Hibiscus Boulevard, discussed the heavy regulations their business has to adhere to. He noted that it takes over 1 ½ years to get permitted and discussed the number of monitoring wells on site. He discussed the daily operation and stated that they go above and beyond what the state requires. Daily, they cover the mound and pick up debris left by the Harris Sanitation trucks along the road.

Regarding the concern about dust, Mr. Jelus said there is not a lot of dust generated from this business. Watering trucks keep the dust down and they control the land to their east which is a substantial buffer.

Mrs. Hand asked how long it will take for their mound to reach the 40’ height. Mr. Jelus said considering the population growth and future hurricanes, his guess is 50 years.

A brief discussion followed regarding the demand for mulch and colored mulch.

Mrs. Poole asked about the industrial subdivision. Mr. Jelus said they are trying to give Council an idea of what is planned for the entire 90-acre tract. This portion deals with the 28-acre landfill expansion.

A brief discussion followed regarding the vacation of the streets and the industrial subdivision. Mrs. Braz confirmed that the new plat plus any vacations, would have to return to Council.

Mrs. Palmer asked if another site is available if they are not able to do the project on this property. Mr. Evans said the logical choice is to expand near the existing operation. They have looked at a lot of locations; however, this is an ideal site. Mr. Jelus added that their operation is not noisy or dusty; their operation does not have an “obnoxious” flavor.

Mrs. Palmer commented that it sounds as if alternative sites are available although they are less cost efficient.

Moved by Beltz/Walker for approval of Ordinance No. 2000-16.

In response to Mr. Palmer’s concern about the vacation of the streets, the Mayor asked the Attorney to review this prior to second reading. Attorney Gougelman recommended “d” be revised as follows:

- d. Applicant’s site plan notes indicate vacation of the Cortez Street right-of-way, relocation of the L-16 canal, and vacation of State Street. Approval of this

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

ordinance shall not constitute City approval of the vacation, or relocation, of the L-16 Canal or the Cortez and State Streets rights-of-way. Approvals from all regulatory agencies are required prior to construction of any facilities permitted by the conditional use authorized by this ordinance.

Moved by Hand/E. Palmer to amend the motion to include the revision to stipulation “d.”
Motion carried unanimously.

The question was called on the main motion, as amended. Motion carried unanimously.

23. ORDINANCE NO. 2000-17 (Police Pension Plan): A proposed ordinance to amend the Police Pension Plan to comply with Chapter 99-01, F. S.

Attorney Gougelman read Ordinance No. 2000-17 by title.

Moved by Poole/E. Palmer for approval of Ordinance No. 2000-17.

Mrs. Palmer questioned the deletion of conditions which previously disqualified a police officer from receiving a disability retirement benefit. One condition that will be removed will be “injury or disease sustained while committing a crime.” She noted that she has a real problem with this.

Following a brief discussion, Mr. Hill said we are required to have a local plan that complies with federal and state law. Nothing in the ordinance is different than what is required by law.

The question was called. Motion carried unanimously.

24. COUNCIL ACTION RE: A request by the Brevard Symphony Orchestra for a waiver or reduction of Auditorium fees in exchange for performing on the 4th of July at Front Street Park and furnishing state of the art stage, lights and sound system for use throughout the day.

Mr. Hill reported that the Brevard Symphony Orchestra will hold a fund raising event at the Melbourne Auditorium on February 20, 2000. The Orchestra has requested consideration of a reduction or waiver in the rental cost of the Auditorium for the event. In return, they will perform on the 4th of July at Front Street Park and furnish the state of the art stage, lights and sound system for use through the day.

The rental cost of the Auditorium is \$1,582.50. The estimated cost to hire the Orchestra and provide the stage, lighting and sound system for the 4th of July celebration would be \$14,000.

The recommendation is for approval of the waiver of Auditorium fees for the Brevard Symphony Orchestra’s February 20, 2000 event in exchange for performing at the City’s

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

July 4th Front Street Park event and providing state of the art stage, lights and sound system for the entire day.

Moved by E. Palmer/Hand for approval of the waiver of the Auditorium fees for the Brevard Symphony Orchestra's February 20 event in exchange for their performance at the City's July 4th Front Street Park event and that the Orchestra will provide state of the art stage, lights and sound system for the entire day. Motion carried unanimously.

25. COUNCIL ACTION RE: Discussion of Council policies requested at the November 2, 1999 workshop meeting.

At the November 2, 1999 workshop meeting, Council discussed existing policies and several suggestions for revisions. As a result two Council Members asked that the following items be placed on a future agenda for discussion.

- Discussion about the policy which prohibits speakers addressing Council from borrowing or assigning time to/from others. (Requested by Council Member Cheryl Palmer)
- Discussion about implementing a policy that would prohibit named parks from being renamed to commemorate citizens (Requested by Council Member Poole).

Additionally, since Council's workshop meeting, Council Member Beltz recommended a policy be established to address organizations that request funding from the City. The following is suggested language:

In the event a person or organization requests funding from the City without a written agreement outlining the services that will be provided with the funding, a supermajority vote of the members of Council present will be required. Supermajority is defined as 6/7 if seven members are present, 5/6 if six members are present, and 4/5 if five members are present.

Council first addressed speakers borrowing/assigning time.

Mrs. Palmer said that the city encourages large groups to designate a spokesperson. In those cases, she believes more time should be allowed. She asked for input from the veteran members of Council.

Mayor Buckley said he does not wish to see this happen. A person could conceivably go on for 1 ½ hours by borrowing time. Also, he would like to hear the opinion of several people at a meeting – not just one person.

Mrs. Poole said she believes it would be fair to give the spokesperson an amount of time equal to the person making the presentation. It is not right that an attorney gets 40-45 minutes, but a resident gets five minutes.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Mr. Beltz said he understands what Mrs. Palmer is trying to accomplish; however, he is not sure there is a way to codify that. He noted that Council does have the ability to grant additional time to a speaker.

Mrs. Hand stated that she agrees with having a spokesperson but disagrees with granting additional time. She noted that agendas are long and meetings run late. If the time is extended, the meetings will be extended.

Mr. Palmer said if a speaker expresses a desire to continue, Council could consider additional time. He believes the policy as written is good and is the best way to receive the maximum amount of information without having the meetings run over.

Mrs. Palmer said if Council will not consider additional time, then we should remove the statement from the sign-up sheet that groups are encouraged to select a spokesperson.

Mr. Beltz stated that Council must simply take on this obligation and make the effort to recognize that a person is functioning as a spokesperson and therefore, needs additional time.

Mayor Buckley agreed with Council taking the initiative to grant additional time.

It was agreed that staff would return with suggested wording at the next meeting. Mr. Hill recommended that Council expand on the current policy and note that Council will consider granting additional time to a spokesperson.

Following a brief discussion on the naming/renaming of parks, Mrs. Poole agreed that the current policy is sufficient.

Mr. Beltz addressed the "funding" policy. He noted that every year, more organizations are coming to the city requesting funding. It is unfair for a particular charity to be given money from the General Fund without an exchange of services. In these cases, he thought there should be more than just a simple majority required for approval.

Mayor Buckley asked for clarification on the requirement for a written agreement. Mr. Beltz said it would be an outline of what the organization would do for the city. This is opposed to organizations who request money to simply meet their budget.

Mr. Palmer suggested that Council require a proposal or presentation as opposed to an agreement.

Mr. Hill explained that most grants in the city require an agreement. It would be beneficial for staff in dealing with these requests if Council had a policy requiring an agreement.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Mrs. Hand asked how we deal with the contributions to organizations like Serene Harbor (through the annual CDBG funding). Mayor Buckley said all of those organizations provide proposals and then the funding is covered by an agreement.

Attorney Gougelman cited an example from a redevelopment in Cocoa which points to reasons why it would be important to require an agreement.

Following a brief discussion, Mrs. Hand said she likes Mr. Hill's suggestion that Council should say up front that a proposal or agreement is required before funding will be considered.

Mayor Buckley asked staff to return with suggested wording on this policy. It was the consensus of Council that a supermajority would not be required if a policy is adopted requiring everyone to have a written proposal.

26. COUNCIL ACTION RE: Appointment of Special Masters to implement the vehicle impoundment ordinance approved by Council.

Attorney Gougelman reviewed the agenda report. The vehicle impound ordinance, Ordinance No. 99-33, provides for the requirement of special masters. Staff believes that a pool of up to four special masters would be sufficient to implement the program. The City Clerk would assign a special master to a particular hearing by random draw.

Staff advertised in the Florida Bar News and the Brevard County Bar Association newsletter for members of the Bar to act as Special Masters. Applicants were advised that at least three years experience as an attorney was a minimal requirement and knowledge of forfeiture law would be considered a plus. Compensation would be at a rate of \$110 per hour, dependent upon qualification.

Attorney Gougelman reviewed the applications received and said the recommendation is to appoint the following as special masters:

Philip Fougerousse – rate of \$110/hour

Timothy J. Bradley – rate of \$100/hour and an increase to \$105 10/1/00

Thomas M. Slawson - rate of \$100/hour and an increase to \$105 10/1/00

Carla Reece Gettlemen - rate of \$100/hour and an increase to \$105 10/1/00

Mr. Gougelman noted that his recommendation for a higher rate for Fougerousse is based on his experience on the bench and the fact that he has higher qualifications than the other individuals. In response to Mr. Palmer, Mr. Gougelman said Fougerousse has more familiarity in adjudicating criminal and criminal related proceedings.

Mrs. Poole pointed out that someone with experience may save the city money in the long run because they could dispense of cases quicker.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Mr. Beltz asked if travel was part of the billable hours. Attorney Gougelman replied no. He added that the hearings would be held in the Council Chamber. Additionally, any research time would be compensated along with the hearing time and time necessary in drafting an unusual order.

A brief discussion followed about the process that would be followed.

Mrs. Palmer referenced the excellent qualifications of Anthony Musto (located in Hallandale) and asked if he requested travel compensation. Attorney Gougelman replied that the automatic assumption among attorneys is that travel will be paid; that is a general rule. Staff is recommending that travel not be paid and if we select someone from South Florida who will be driving three hours each way for a maximum one hour hearing, it does not economically make sense. Continuing, he noted that he did not contact Mr. Musto.

Moved by Poole/Hand for approval of the recommendation. Motion carried unanimously.

27. COUNCIL ACTION RE: A request from the Brevard Mosquito Control District for permission to spray from aircraft to combat the spread of St. Louis encephalitis which is transmitted by the Culex mosquito.

From the agenda report: The Brevard Mosquito Control District is required by the Federal Aviation Administration to obtain written approval from the appropriate official or governing body of the political subdivision over which spraying operations are conducted. During normal mosquito season, aircraft will operate over the city numerous times spraying for mosquitoes. They have been conducting these operations for years and believe it is the most effective and economical way to treat large infestations of mosquitoes.

Moved by E. Palmer/C. Palmer for approval. Motion carried unanimously.

28. COUNCIL ACTION RE: Board Appointments

- a. Planning and Zoning Board – two alternate members

Moved by Beltz/Hand to reappoint Lauritsen. Motion carried. (Mrs. Palmer voted nay.)

Moved by Poole/E. Palmer to reappoint LaFleur. Motion carried unanimously.

29. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mayor Buckley informed Council that he has tickets available for the United States Air Force Band Strolling Strings. They will be performing at the BCC Auditorium in Cocoa next week.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 25, 2000

Mayor Buckley said he has asked the City Manager to hold up on paying the Melbourne Community Orchestra. Council had previously approved money for the orchestra for Claire Christy. If they are not going to rehire Mr. Christy, he would like the orchestra to address Council.

30. ADJOURNMENT

Moved by E. Palmer/Walker for adjournment. Motion carried unanimously.

The meeting adjourned at 11:12 p.m.

City Clerk – 2/3/00

Approved by Council: _____