

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 14, 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. Pastor Arthur Barnes, Mt. Moriah Baptist Church, 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
	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

Absent: Grace Walker Council Member – Dist. #4 (III)

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented the following proclamations:

“Florida Confederate History Month”, April 2000; accepted by Wesley Frank, Sons of Confederate Soldiers.

“Keep Brevard Beautiful Month”, April 2000, and Trash Bash Day, April 15, 2000; accepted by Cindy Zaruba, volunteer, Keep Brevard Beautiful.

Additionally, the Mayor presented a proclamation to the Melbourne Central Catholic High School 1999-2000 Stingers Dance Team in recognition of winning three champion titles at a recent competition.

5. APPROVAL OF MINUTES - Regular Meeting – February 22

Moved by Hand/Beltz for approval. Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mr. Hill reminded Council about the public meeting being held on March 15 to discuss drainage issues.

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7. PUBLIC COMMENTS

Steve O'Neill, 538 Dijon Drive, Chairman, Zoning Board of Adjustment, reported that the board took action to request Council give consideration to experienced applicants when appointments are being made. He noted that a board with lack of experience would impact variances; it takes up to a year for a member to grasp what it takes to be part of the Board of Adjustment.

John Mutschler, 4565 Grand Meadows Boulevard, stated that a subdivision was recently approved with variances from the Code. However, when the gas station was approved at the entrance to his subdivision, the residents were told they could not have two entrances along Wickham Road because of the Code. He asked Council to treat all areas of the city equally.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2000-19 (Zoning Request/Z-2000-892): (Public Hearing/First Reading). A request for C-1A (Professional Offices and Service District) zoning for a parcel zoned R-1AA (Single-Family Residential) located on the southwest corner of Babcock Street and Edgewood Drive. (Owner/Applicant – Shawn Parker) (Postponed 2/22/00)

Attorney Gougelman read Ordinance No. 2000-19 by title. Mayor Buckley referenced the petition received, which indicates that 21.6% of the residents within 500 feet object to the rezoning. This means that the request will require an extraordinary vote for approval on second reading.

Mrs. Braz briefed Council. The lot is .24 acres and is part of the Hickory Hills Estates Subdivision. The applicant previously requested this change and was denied by City Council on November 30, 1999. Mr. Parker revised his plans and Council approved a waiver of the six-month waiting period on January 11.

The property has a mixed use, commercial and low-density residential future land use designation. Babcock Street traffic volume has more than 31,000 average daily trips. Many similar lots that have frontage on Babcock Street in this area have changed to professional zoning. Even with the changes, the integrity of the neighborhood has been maintained. With required buffering, this zoning designation will be compatible with the residential community to the west. A two-page site plan has been submitted showing the proposed buffering and related details.

The Planning and Zoning Board and staff recommended approval of the request subject to the findings as listed in the Council package.

Mrs. Poole disclosed that she spoke with Grace Berg and Ms. Beers who are residents in the area opposed to the request.

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Mr. Beltz referenced the cover letter of the petition, which indicates that when the eye care center was rezoned, City Council assured the residents that it would not have a bearing on future rezonings. Mrs. Braz said she does not have any information indicating that and she has no recollection that was stated.

Robert Beals, attorney representing the applicant, 1900 S. Hickory Street, pointed out that the Planning and Zoning Board has approved this request and the recommendation from staff is for approval. The house is an eyesore on Babcock Street. The applicant has purchased the property and he wants to improve it. A landscaping plan has been submitted. Mr. Beals stated that his client plans to operate an insurance business at this location. He added that an emotionally charged issue is generally the result of misinformation and gossip. He is not sure why anyone would object to the proposed use and said he is willing to consider a conditional zoning. He concluded by saying the traffic impact would be virtually nominal and there is no objective reason for opposition to the request.

With respect to the petition, Mr. Beals asked Council not to consider it at this meeting. He added that at this point, the matter is fluid. People who signed can voluntarily withdraw their names.

Rochelle Lawandales, President/Owner, Lawandales Planning Affiliates, distributed a "findings of fact" packet to Mayor and Council. She discussed the need and justification for the change; the impact on adjacent properties; the availability of undeveloped or other zoned lands; and the fact that the proposed use is consistent with the city's Comprehensive Plan. She concluded by stating that it is her opinion that the use is consistent and compatible with current and planned uses, both residential and commercial. The current planning trends are showing the need to bring more neighborhood services back to the community.

Responding to Mrs. Poole, Ms. Lawandales stated that the address of the site is 11 Edgewood Drive.

Mrs. Poole stated that the site was intended to be used for residential. The previous owner did not make a big effort to rent the house. The house has potential; it can be purchased and fixed up for residential use.

Mr. Beltz agreed that sometimes opposition results from misinformation. He asked if the applicant has made an effort to reach out, have meetings, and discuss the issue with the residents so that this issue can proceed to second reading.

Mr. Beals said it is a very fluid situation. He has made progress because there are people who signed the first petition who did not sign the second petition. It is difficult for someone who is employed full time to go door to door. People don't trust people who come to the door. That is why they welcomed the public hearing to try and understand why there is so much emotion over this issue.

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Mr. Beltz noted that the residents closest to the applicant seem to be in favor and the ones farther away are opposed. Mr. Beals said that is the result of Mr. Parker reaching those people first and explaining the request. People who live three blocks away signed letters vehemently opposed. Perhaps they can explain because he does not understand.

A brief discussion followed regarding the applicant placing fliers in mailboxes. Mrs. Poole pointed out that is against United States postal regulations.

Michael Segebarth, 21 Edgewood Drive, pointed out that his lot (5) should be indicated on the map as opposed. He discussed the packet of information in the package that he provided relating to traffic citation information. The information was collected through the Melbourne Police Department and it shows a dramatic increase in traffic stops and other crimes in the area. The residents want to keep the neighborhood safe and quiet and he asked Council not to approve the rezoning. Based on visual observations over the last few years, he noted there has been an increase in speeding, running stop signs, and after hours activity in the park. Based on this, the residents feel this change would impact the traffic. He concluded by stating they do not want another commercial property south of Edgewood Drive.

Mrs. Palmer asked Mr. Segebarth if he spoke with Mr. Parker. Mr. Segebarth replied that Mr. Parker visited his residence twice. He is understanding of Mr. Parker's position, but not willing to support it when there are properties available north of Edgewood Drive on Babcock Street. Additionally, he referenced the placement of the flier in his mailbox and said some of the tactics have been unethical.

Mrs. Palmer asked Mr. Segebarth his opinion on the property remaining a rental if this request were denied. Mr. Segebarth replied that he would view it as having no impact; it would be just another neighbor.

Grace Berg, 2415 S. Ruffner Road, asked that Council not approve the request. She questioned why this location and noted that there are empty offices throughout Melbourne. Ruffner Road has become a raceway; motorists ignore the stop signs and they don't need more traffic using the area as a cut through.

Carol Cramer, 11 W. Vida Way, said she is emotional about this issue because this has been her home for over 30 years. She recalled the history of the area and how it has changed. The request will intrude on her life. She does not want to think about being edged out of this location; the area does not need a business as a neighbor. She asked Council to hold to the decision made last year and keep the area residential.

Laura Beers, 20 Rosevere Way, protested the rezoning and said she feels once the precedent is set with the change to professional, then the change to commercial would be easy. The change would lead to more crime and traffic in the area. Besides the letter she received in her mailbox, she noted that Mr. Parker never made an attempt to contact her. Additionally, a neighbor said she would get \$200,000 for her property and Ms. Beers is not sure how this could happen because Mr. Parker bought his house for \$70,000.

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She questioned this discussion (about the \$200,000) along with Mr. Parker's motives for this subdivision. She concluded by saying that if the property were fixed up and listed with a qualified realtor, Mr. Parker would make a profit.

Following a brief discussion, Ms. Beers said she is saying that the property should be listed with someone who is knowledgeable about rental properties.

Mr. Beltz asked which property has the possibility of selling for \$200,000. Ms. Beers said she would prefer not to say. One neighbor has stated that she was going to receive \$200,000 and she would not sign the petition because of that.

Johnise Sapundjieff, 19 Rosevere Way, stated that the Comprehensive Plan is wrong to include these five properties that have east sides facing Babcock Street. If this parcel is rezoned, it will drastically reduce the value of homes in the area and increase the traffic and crime. She referenced the area north of this site off of Babcock Street that is vacant. When the eye care facility was rezoned, Council assured the homeowners that it would have no bearing on the future rezoning of homes. Once this rezoning is approved, all five properties can become commercial. Mr. Parker has personally told her that he plans to buy all five properties on Babcock Street and he has told those with properties to the west that he would buy those properties for an unbelievable amount. If this happens, there would only be three houses left on each block. Mr. Parker is involved in real estate; his job is to buy properties and change the zoning to commercial. She added that there is no reason that this house can't be landscaped, the lawn watered and fertilized, and the property rented.

Mayor Buckley read a letter dated February 18 from Vineta Raley, 15 Edgewood Drive. Ms. Raley questioned if the properties, whose side yards abut Babcock Street, can be rezoned to commercial. If this could happen, then she would be opposed to the request on the agenda. If there were a guarantee that the property owner would not place a commercial business on the property, then she would not be opposed.

Vineta Raley, 15 Edgewood Drive, asked that her questions be answered. She stated that the house has been troublesome and she would like to see it improved, but not at the cost of the remainder of the neighborhood.

Mr. Beltz said he is beginning to understand why the neighbors are concerned, especially in light of the discussion about the applicant purchasing a whole fleet of properties.

Shawn Parker, applicant, said he has never approached any of the residents and offered money or stated that he would acquire other properties in the neighborhood. His intention is to turn his property into an insurance agency.

Mrs. Poole said she has received information that Mr. Parker threatened to paint the house black if this item is not passed. Mr. Parker responded that threats were not given to anyone. He added that he stands with open arms and invites the neighbors to select the fence, house color, etc.

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A brief discussion followed regarding Mr. Parker's business and what his plans would be if the rezoning failed.

Mr. Gougelman asked what conditions have changed, other than individual opinions, between the time of the initial denial and this meeting. Mr. Parker stated that he now has a landscape plan. Additionally, when he had the water turned on, a city employee was unable to find "11 Edgewood Drive". The address was listed with the city as "2500 Babcock Street."

Mr. Beals added that there are two differences – the binding site plan and the offer by the applicant that the zoning can be conditional if there are uses that are objectionable.

Ms. Raley addressed Council and stressed that no money has been mentioned to her at all.

Attorney Gougelman placed the following in the record: the "findings of fact" submitted by Lawandales; the Council package; the Planning and Zoning file; the Comprehensive Plan; and the Zoning Code.

Mr. Gougelman confirmed for Mrs. Poole that his preference would be for the extraordinary vote to apply at second reading.

Mr. Beltz pointed out that the residents are concerned about the domino effect. Mrs. Braz said there should not be a domino effect to the west. It is true that the next lot over could receive transitional zoning. Transitional zoning does not change the zoning classification. Only a few, low intensity uses are allowed in a transitional area. The property is still zoned residential even though there are transitional uses on it. Regarding the north/south zoning, there is a land use pattern that shows professional uses on the properties with an eastern border on Babcock Street.

Mrs. Poole pointed out that there is no security because all that would be required would be a land use and zoning change and Council has done that before.

Mrs. Hand said she is trying to recall when the eye office was rezoned whether Council said it would go no further. Mrs. Braz said there is nothing in the stipulations, but there could have been discussion at the Council level.

Mrs. Braz confirmed for Mr. Beltz that a change to commercial would require a change in land use.

Mr. Palmer said it is important for Council to remember that every one of these homes is in an R-1AA neighborhood. Commercial zoning would disrupt the entire neighborhood. The traffic increases would be huge. He is for sending this to second reading; however, something will have to come up before he changes his mind because this does not make sense.

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Mrs. Poole said she is going to go against what our attorney recommended. The longer an applicant has, offers can be made in order to get more people to remove their names from the petition. From all the evidence that has been presented, she believes there is a good case to deny the request.

Moved by Poole/Hand to deny Ordinance No. 2000-19.

Mr. Palmer said the house is in a residential neighborhood. Just because the side of the property runs parallel to Babcock Street, it does not give the owner a right to rezoning.

Mrs. Palmer said if this went to second reading, she would like some of the people who were offered money to state so for the record. Unfortunately, when people make accusations, they can't be proved/disproved. She said it appears to her this plan would have improved the property and provided a buffer between Babcock Street and the neighborhood. The business does not generate noise and it is vacant at night. Additionally, she does not believe this change would compound the traffic problem.

Mayor Buckley referenced the material submitted by Mr. Segebarth and said it appears there was a traffic problem before this request came up. The applicant plans to use the house as an office. He is going to landscape and improve the site and he doesn't believe it will make the traffic more intense.

Mr. Beltz stated that he does not see how postponing this item another two weeks would help change. He apologized to Mr. Parker and stated that he believes his development would have improved the neighborhood.

The question was called. The roll call vote was:

Aye: Beltz, Poole, Hand, and E. Palmer

Nay: C. Palmer and Buckley

Motion carried.

Recessed: 9:22 p.m.

Reconvened: 9:33 p.m.

9. ORDINANCE NO. 2000-18 (Conditional Use CU-1999-09/Shiloh Christian Center): (Public Hearing/Second Reading) A request for a conditional use for a church and church related facilities on a parcel zoned R-1A (Single-Family Residential) and C-1 (Neighborhood Commercial) located at the intersection of Main Street and University Boulevard, north of University Boulevard and on both sides of Main Street. (Owner – Shiloh Christian Center) (Applicant – Jacqueline D. Gordon, Pastor) (Representative – M. F. Sofarelli, Jr.) (First Reading 2/22/00)

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Mr. Gougelman read Ordinance No. 2000-18 by title. There were no comments from the audience.

Moved by Poole/C. Palmer for approval of Ordinance No. 2000-18. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2000-20: (Public Hearing/Second Reading) A proposed ordinance implementing a Water Franchise Agreement with the City of Satellite Beach. (First Reading 2/22/00)

The attorney read Ordinance No. 2000-20 by title. There were no public comments.

Moved by Hand/E. Palmer for approval of Ordinance No. 2000-20. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

11. COUNCIL ACTION RE: D. B. Lee Exploratory/Monitor Well Construction, Project No. 94310.

a. Award of the D. B. Lee Exploratory/Monitor well construction contract, Jaffer Associates, Ltd. Miami, FL – \$375,400.00.

b. Amendment to L.S. Sims & Associates Contract for Services on D. B. Lee Exploratory/Monitor Well Construction, L. S. Sims & Associates, Melbourne Beach, FL – \$98,245.00.

Mr. Hill reviewed the agenda report. Two contract awards associated with renovating the D. B. Lee injection well for R.O. potable water by-product disposal are recommended. Staff has also negotiated a fee with the geologist consultants for services during the well construction period.

The city is currently operating under a Consent Order with FDEP for disposal of R.O. potable water by-product. The goal is to obtain a permit to utilize the D. B. Lee injection

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well for disposal of the by-product. The city's permit to discharge to the Eau Gallie River has been extended while this effort is underway.

Bids were received and opened and the low bidder is Jaffer Associates, Ltd. (Miami) - \$375,400. The firm has demonstrated its qualifications and recently completed the construction of two R.O. production wells for the City of Palm Bay.

The work consists of constructing a 6-inch diameter exploratory/monitor well to a depth of 1,100 feet, obtaining cores for laboratory analysis, geophysical logging, and TV survey. The contractor will be subject to the city's standard contractual requirements. The time for completion is 150 calendar days and the liquidated damages are \$200 per day.

The well contract is a unit price basis so the not-to-exceed contract amount is established on the total of all unit item bid prices times estimated quantities. Payment will be based on actual quantities as measured and verified by the consultants.

The recommendation is for approval of the well construction contract with Jaffer Associates, Ltd. for the not-to-exceed amount of \$375,400.

The second item is a proposed amendment to the contract of geology consultants L. S. Sims & Associates for geologist services during the well construction. The scope of work is defined as Phase II, Tasks 2 and 5. Phase II is this exploratory/monitor well construction. Task 2 is the geologist's contract administration and inspection services during this phase. Task 5 is various meetings associated with the project but primarily related to ongoing efforts with FDEP to eventually permit the D. B. Lee injection well for R.O. by-product disposal.

The services to be provided by the geologist during this phase are all at hourly rates. The actual on-site observation of the well construction will be a function of the contractor's schedule. However, the full 150-day construction time period is considered in this proposal as a not-to-exceed cost. The geologist's services include contract administration, full-time inspection of the well construction, preparation of reports for permitting requirements, and laboratory analyses of water quality sampling.

The recommendation is for approval of the amendment to the L. S. Sims & Associates contract for the not-to-exceed amount of \$98,425.

Moved by Hand/Poole for approval of the well construction contract with Jaffer Associates, Ltd. for the not-to-exceed amount of \$375,400.

Mr. Palmer referenced the use of funds designated to plug the well. He asked what would happen if the well has to be plugged later. Mr. Hill said that is a risk Council will have to take. Staff's feeling is that it makes more sense to put the well to productive use. Mr. Palmer agreed.

The question was called. Motion carried unanimously.

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Moved by E. Palmer/C. Palmer for approval of the amendment to the L. S. Sims & Associates contract for the not-to-exceed amount of \$98,425.

Mr. Beltz questioned the use of a geologist on the site each day. Mr. Hill said that because of the risky nature of wells, it would be a benefit to have a geologist monitoring and logging the activities.

Larry Sims, L. S. Sims & Associates, stated that the on-site geologist will be collecting samplings and performing a lot of laboratory testing. In addition, he is responsible for keeping a daily log of all materials that go into the well, including the cement, casings, etc. The amount of time it takes to dig the well will dictate the fees. Mr. Sims added that his company developed the specifications for drilling and testing and it will be the geologist's duty to ensure that the contractor adheres to those specifications.

The question was called. Motion carried unanimously.

12. COUNCIL ACTION RE: Change Order No. 1 to contract for upgrading waterlines in Bowe Gardens Subdivision, Project No. 98303, Don Luchetti Construction, West Melbourne, FL - \$69,226.00

Mr. Hill briefed Council. Don Luchetti Construction is currently replacing and upgrading waterlines in the Bowe Gardens Subdivision (Project No. 98303). There is a funded FY 99-00 CIP for replacement of french drains in this area.

Staff solicited a quote from the contractor to perform this work in order to eliminate having the street and right-of-way being torn up in back-to-back projects. The quote from Don Luchetti Construction for the 1,513 l.f. of french drain is \$69,226. This price is within 10% of current bid work (Project 96091 - Santa Cruz Construction) in other areas of the City.

The recommendation is for approval.

Moved by C. Palmer/Hand for approval of Change Order No. 1 to the contract for upgrading waterlines in Bowe Gardens Subdivision with Don Luchetti Construction, \$69,226. Motion carried unanimously.

13. COUNCIL ACTION RE: Consent Agenda

Mrs. Palmer referenced "l" and asked why a 90 HP motor is needed. Mr. Hill said it is used on the lake under extreme conditions and there are times when the power is needed.

Mr. Beltz referred to item "b" and asked if there is some insurance coverage for storm damage. Mr. Hill replied that the city has \$100,000 deductible on property damage. In this instance, we are asking FIND to assist us with half the cost and we will attempt to recover a portion through FEMA and insurance.

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Moved by Hand/E. Palmer for approval of the consent agenda, items “a – l”, as recommended. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Resolution No. 1626: A resolution authorizing the City Manager to apply to the Florida Inland Navigational District's (FIND) Waterways Assistance Program for funds for the replacement of the Houston Street seawall.
- b. Resolution No. 1627: A resolution authorizing the City Manager to apply to the Florida Inland Navigational District's (FIND) Waterways Assistance Program for funds for the stabilization of the shoreline at Pineapple Park.
- c. Resolution No. 1628: A resolution authorizing the City Manager to apply to the National Park Service Urban Park and Recreation Recovery Program for funds for improvements at both golf courses.
- d. Resolution No. 1629: A resolution to adopt names for private streets in Harvard Apartments.
- e. Contract for financial advisory services for the Water and Sewer Improvement Revenue Bonds, Series 2000, Public Financial Management (PFM), Orlando, FL – in the amount of \$25,730.00 plus out of pocket expenses not to exceed \$5,000.00.
- f. Contract for Water and Sewer Improvement Revenue Bonds, Series 200, Rate Study Consultant Services, Burton & Associates, Winter Springs, FL - not to exceed \$9,955.00.
- g. Purchase of replacement HP Netserver LH3000 PIII/733 Pedestall D9176A #ABA, for City Hall, Comark, Tampa, FL - \$14,193.00.
- h. Replacement mowing contracts for an additional portion of North Areas I, II, and III, Green Side Up, Melbourne FL – for second and third year increases of \$7,588.00 and \$11,932.00.
- i. Replacement purchase of a John Deere 410 4x4 tractor loader backhoe, Nortrax Equipment Co., Orlando, FL - \$74,997.75.
- j. Replacement purchase of a Nissan Model JP60 pneumatic tired forklift truck, Mid-Florida Forklift, Inc., Orlando, FL - \$22,581.00.
- k. Replacement purchase of Workskiff®19 aluminum boat, Workskiff, Inc., Stanwood, WA - \$19,806.00

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- I. Purchase of Johnson Model J90VLSS 90HP V4 boat motor including accessories, OMC Government Sales, Waukegon, IL - \$3,791.00

- 14. SITE PLAN APPROVAL (SP-2000-01/Ocean Side Village, Phase 2B): (Public Hearing)  
A request for site plan approval for a 66-unit multiple family residential townhouse complex, located south of SR 518 (Eau Gallie Boulevard) and west of SR A1A. (Owner/Applicant – River Oaks Partnership) (P&Z 2/24/00)

Ms. Braz briefed Council. The 6.6-acre property was annexed in 1979 and zoned PUD (Planned Unit Development). In 1986 the zoning on this property was changed to C-1 (at that time low intensity commercial and now neighborhood commercial). In 1997, the zoning was changed from C-1 to R-2 (Cap 10). The land use was originally mixed use Commercial/Medium Density Residential with a density limit of 10 units per acre. The land use was changed to Medium Density Residential with a density restriction of 10 units per acre in 1998 when the Comprehensive Plan was revised and readopted.

The applicant is requesting site plan approval on the vacant 6.6 acres for the 66-unit townhouse complex. This is the second phase of the townhouse project. The proposed development plan consists of 11 buildings containing six units each for a total of 66 units. Each unit will consist of a two-story structure on an 828 square foot pad. Each unit will have an enclosed garage parking space and an exterior surface parking space for a total of 132 parking spaces. A private road will be constructed to connect existing Ocean Side Boulevard (formerly Waterside Boulevard) and Eau Gallie Boulevard. A gate will be constructed approximately 420 feet south of Eau Gallie Boulevard. A gate exists on Ocean Side Boulevard, west of SR A1A. Two driveways will be provided within this phase connecting to the private streets. All parking spaces, including the garage units, will be accessed from the driveways. Retention will be provided within the yard areas of the project. These retention basins will be dry.

There are existing easements that now cross the property that will have to be relocated in order to construct the project. One of these easements provides stormwater outfall for the adjacent Ocean Springs Shopping Center. Another provides existing drainage conveyance for Ocean Side Boulevard and portions of Phase 2A.

The Environmental Impact Assessment report indicates that gopher tortoises inhabit the property. A permit was provided to take any gopher tortoises as part of the approval of the original Waterside Down project in 1997. The U.S. Fish and Wildlife Service issued a permit to take scrub jay habitat. This permit is valid until May 31, 2000. The interior portions of the site contain a dense canopy/cover of scrub live oak. The developer should preserve as many of these trees on the site as possible, including moving buildings and retention to preserve trees.

The developers will be required to file a survey to be recorded with the County Court Clerk's Office since each unit will be under separate ownership and described by a metes and bounds description.

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The Site Plan is consistent with the Melbourne Comprehensive Plan and the Future Land Use Element.

The Planning and Zoning Board and staff recommended approval of the site plan for Ocean Side Village Phase 2B, prepared by Lee Engineering of Satellite Beach, FL consisting of a one-sheet plan numbered sheet 1 of 1, with Job Number 0187-2B, dated November 1, 1999 with a revision date of February 18, 2000, with the findings listed in the Council package and the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the City Engineering and Planning and Zoning Departments. 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: 1) a decrease of 5% of the open space or vegetative areas on site; and 2) any increase in the number of units shown on the site plan.
- b. All trees and scrub habitat shall be preserved unless located in a roadway, drainage facility, or building pad. Further, all structures, streets, and cleared retention/detention areas shall be shifted whenever possible to preserve trees. Initially, trees and scrub habitat shall only be removed for driveways, drainage facilities, and model homes. Trees and scrub habitat in the footprint of additional structures shall be removed only in conjunction with a building permit. Trees that can be retained within the drainage system shall be preserved whenever possible. All trees and scrub habitat to be removed must be identified by Code Enforcement personnel after evaluating the possibility of saving the trees and scrub habitat by shifting the drives, building pads, and retention areas. \*All trees to be preserved must be protected by barricades during construction.

\*Note: See Council action for elimination of this sentence.

- c. Prior to development of the property, the owner/applicant shall obtain and provide to the City, approved or revised mitigation plans to relocate any gopher tortoises found on the property from the Florida Fish and Wildlife Conservation Commission, if necessary, to comply with the earlier issued permit on this property, and provide a revised mitigation permit from the U.S. Fish and Wildlife Service for scrub jays, scrub jay habitat, and any other endangered or protected species or species of special concern, if necessary, to comply with the earlier issued permit on this property.

Should the developer discover that other endangered or threatened species for which a permit has not been granted are found on site after plan approval and prior to completion of construction, construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development. Should construction begin on the project after the date of expiration of required permits, such permits should be renewed or otherwise be made valid prior to beginning construction.

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“Development” shall be defined as set forth in Section 380.04, F.S., and includes any construction activities within a right-of-way.

- d. 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.

Mrs. Poole referenced stipulation “b” and noted that the barricades should be placed at the drip line. Mrs. Braz agreed and stated that stipulation can be changed.

Mrs. Poole asked who would perform the mitigation. Mrs. Braz stated that they have to get their permits updated from the regulatory agencies.

Rob Lee, Lee Engineering, applicant, displayed a plan and discussed the request. He noted that he agrees with all the stipulations with the exception of placing barricades around the trees. He explained that the Brazilian peppers are growing into the oak trees and equipment has to be able to move in to pull them out. Once the peppers are removed, the oak trees respond immediately. This would be an impossible task if the trees to be saved were barricaded.

Moved by Beltz/E. Palmer for approval, subject to the stipulations.

A brief discussion followed. It was the consensus of Council to strike the sentence regarding barricades from stipulation “a” for this project only.

The question was called. Motion carried unanimously.

15. ORDINANCE NO. 2000-21 (Z-2000-893/CU-2000-01): (Public Hearing/First Reading) A request for rezoning from C-1 (Neighborhood Commercial) to C-2 (General Commercial with a conditional use for an automobile service station), located at the southeast corner of Apollo Boulevard and Sarno Road. (Owner/Applicant – Barlo Realty/Ernest G. Popplein/Crown Petroleum of Florida/Apollo Texaco) (P&Z 2/24/00)

Attorney Gougelman read Ordinance No. 2000-21 by title.

Ms. Braz briefed Council. The site contains 0.918 acres of land, approximately 40,000 square feet, more than half of which is developed with the existing service station. The station was built in 1968, and has been continually updated. At the time of construction the service station use was allowed in a C-1 zoning district. With the 1989 Code revisions, automobile service stations were no longer permitted in a C-1 district and were required to have a conditional use even within a C-2 Zoning District and to meet a series of performance criteria written into the Code.

Three of the four corners of the intersection have a commercial future land use and the fourth corner is a mixed use, commercial low density residential. Two corners of the

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intersection are zoned C-P (Commercial Parkway), and the fourth corner is zoned R-1AA, Single-Family Residential. The lot to the east of this parcel wraps around the subject parcel and is zoned C-1. The lot meets the minimum lot size, with more than 25,000 square feet in the parcel; it meets the minimum floor area with 2,944 square feet, including a 900 square foot addition; it meets the frontage, height, lighting, underground storage and stage I gas fume recovery system requirements. The existing developed portion of the site does not meet the setback for the dispensing units because Sarno Road was widened, leaving only 22 feet to the dispensing stations. Apollo Boulevard was also widened leaving the underground tanks at approximately 32 feet from the perimeter lot line. The parcel is more than 100 feet from the high water mark of any surface water body. An opaque fence is proposed and the applicant has agreed that when the adjoining property develops, the fence will be moved and a planted buffer will be put in place.

With the exception of the planted buffer, the exceptions to the performance standards are not the result of actions by the applicant, and if the rezoning and conditional use are approved the applicant will be taking other steps as shown on the site plan to increase the conformity of the site to current standards. Staff has been interpreting Article XI (Non-Conforming Uses) of the Zoning Code to permit redevelopment of non-conforming sites provided that any non-conformity is not increased and provided that existing non-conforming conditions are reduced if possible. The site will retain some non-conforming attributes.

The Planning and Zoning Board and staff recommended approval subject to the findings as listed in the Council package and the following stipulations:

- a. Changes to the site plan of more than 5% of the building area or the addition of a driveway entrance will require this plan to be reevaluated by the Planning and Zoning Department and the Engineering Department.
- b. Approval of the site plan is not approval of required engineering which includes drainage, fire flow, sanitary sewer, potable water, grading, paving or any other required infrastructure.

The applicant was not present.

Moved by E. Palmer/C. Palmer for approval of Ordinance No. 2000-21. Motion carried unanimously.

16. ORDINANCE NO. 2000-22 (Police Pension DROP Plan): (First Reading) A proposed ordinance providing a deferred retirement option plan (DROP) for police officers.

Attorney Gougelman read Ordinance No. 2000-22 by title.

This is an ordinance to implement a deferred retirement option plan (DROP) for eligible police officers. This optional retirement benefit was provided for in the last PBA contract.

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City staff and PBA representatives have been working with the Police Pension Board to prepare the appropriate ordinance for implementation.

The DROP program would allow eligible police officers to "retire" for pension benefit calculation purposes and draw a pension benefit while continuing to be employed as a police officer. The pension payments are deposited into a DROP account for the participants and paid to the participants upon termination of employment as a police officer. Once the participant enters the DROP program, neither the city nor the employee makes a contribution on the officer's earnings.

The Board Actuary, Foster & Foster, has reviewed the proposed ordinance and determined that there is no actuarial impact to the city.

The recommendation is for approval.

Moved by Poole/Hand for approval of Ordinance No. 2000-22. Motion carried unanimously.

17. RESOLUTION NO. 1630: A resolution to implement FY 1999-2000 First Quarter Budget Review recommendations.

Attorney Gougelman read Resolution No. 1630 by title.

Moved by Hand/E. Palmer for approval of Resolution No. 1630. Motion carried unanimously.

18. COUNCIL ACTION RE: A request for funding from Local Option Gas Tax funds for the first phase of the Babcock Street Redevelopment landscape design, from NASA Boulevard to Hibiscus Boulevard - \$40,000.00.

Mr. Hill reviewed the item. This is a proposal from the Babcock Street Redevelopment Committee requesting Council allocate available Local Option Gasoline Tax funds for design of streetscape improvements on Babcock Street. The committee hopes to be able to proceed with improvements as outlined in the redevelopment plan in a prompt manner. However, as Council is aware, funding for the improvements from the district remains limited at this point.

Phase 1 of the improvements would be between Hibiscus and NASA Boulevards. This will complement work to be done by the Florida Department of Transportation next year to resurface NASA Boulevard from the Airport east to U.S. 1.

The recommendation is for approval of the allocation of \$40,000 Local Option Gas Tax funds to the Babcock Streetscape Design.

Mrs. Poole said she has deep concerns about the large amounts of money being mentioned by the members in the minutes along with going out for bonds. She thought

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the area was going to have a lot of private investors and does not believe borrowing \$2 – 3 million as mentioned by Mr. Allen is what the city had in mind. Additionally, it appears Mr. Allen is looking towards using “Florida” in the name of the area and she hopes the name of the redevelopment area is not being changed.

Mr. Hill stated that Council appointed some highly experienced people with business experience. When the district was created, the anticipation was that a substantial amount of private investment would occur in the district spurred by public work and infrastructure. While the amount of funding sounds large, it is relatively modest when compared to other redevelopment areas. The group is trying to think through all the best consequences; however, ultimately they are an advisory body to Council.

Mr. Palmer said he believes the discussion about \$2 – 3 million involves planning. The committee is contemplating what will be feasible and he believes they have come up with a good solution.

Mayor Buckley said he believes this is a legitimate start.

Mr. Beltz asked why the committee’s minutes reference \$13,000 in LOGT funds. Mr. Hill said the discussion in the minutes was about the amount available as undesignated. There are more funds available that are not otherwise designated for projects. If Council agrees with this, a budget adjustment would be required.

Mrs. Palmer stated that she is in favor of the Babcock Redevelopment District. She is pleased with the private improvements; however, she does not believe the citizens would think highly of using LOGT funds for streetscaping when so many people have problems with streets and drainage. She added that she has also been put off by the discussion about the high amounts of funding.

Mrs. Hand said she believes the committee has a lot of vision; this is something the city has wanted to do and it is a good start.

Moved by Hand/E. Palmer for approval of the recommendation.

Responding to Mrs. Poole, Mr. Hill said the members understand that the attraction of investment in the district is based on facilities and public improvements. They are looking for ways to be the catalyst. The first improvement needs to be something visible and tangible.

Mrs. Poole asked if the city issued bonds for Downtown Redevelopment. Mr. Hill replied yes, some bonds were issued.

Mrs. Poole stated that she does not want the Babcock area renamed “Florida” simply because the Florida MarketPlace is located there. Mr. Hill explained that the members are looking for an identity for the area. Calling the area “Babcock Redevelopment” may

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not be right. It needs to be something more localized and particular to the area. It can be adopted as a theme and used throughout the district.

Mrs. Poole noted that the redevelopment has to grow by degrees. Mrs. Palmer said she would vote aye at this step; however, she cautioned the committee to take it slow.

The question was called. Motion carried unanimously.

19. COUNCIL ACTION RE: A request by the Indian River Lagoon Scenic Highway Corridor Advocacy Group for the City to join with other member entities to form a Corridor Management Entity (CME).

This is a requirement of the FDOT Scenic Highways Program. Two actions are required. First they are requesting that the City enter into The Indian River Lagoon Scenic Highway Corridor Management Entity Agreement with the Marine Resources Council and other member entities. By doing this the Council will be agreeing to:

- a. The approval of the stipulated Indian River Lagoon Scenic Highway Route in the respective jurisdictions (included in the agenda package).
- b. The approval of the Vision of the Indian River Lagoon Scenic Highway (included in the agenda package).
- c. The approval of the Preliminary Goals and Objectives of the Indian River Lagoon Scenic Highway (included in your agenda package) as these goals and objectives are applicable and appropriate to its specific local government or jurisdiction.
- d. The incorporation of the above three items in its Comprehensive Plan, or its equivalent, at the earliest opportunity.
- e. The appointment of one or two representatives to the CME.

The City Attorney has reviewed the proposed agreement and has commented to the Brevard County Metropolitan Planning Organization that the proposed agreement would not be appropriate in the form presented. Instead, he suggested Council approve the draft letter in the package voicing support for the plan and agreeing to consider actions to implement the state requirements.

The second request is the appointment of representatives as indicated in #5. The Advocacy Group suggests that one representative should be either an elected official or staff member who is familiar with the Comprehensive Plan and one general member.

Moved by Poole/C. Palmer to accept and use the letter written by Attorney Gougelman. Motion carried unanimously.

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Mrs. Palmer said she would like to see a member of Council appointed to the advocacy group. She recommended the Mayor. Mayor Buckley declined because of his schedule. Mayor Buckley recommended Mrs. Palmer. Mrs. Palmer accepted.

A brief discussion followed.

Mrs. Poole nominated Sueann Thomaston.

Moved by E. Palmer/Hand to close the nominations. Motion carried unanimously.

Moved by Poole/E. Palmer to appoint Sueann Thomaston. Motion carried unanimously.

20. COUNCIL ACTION RE: A request for funding by the Melbourne Community Orchestra.

In September, Council approved a grant to the Melbourne Community Orchestra in the amount of \$5,000 to be used toward the salary of Mr. Claire Christy, the previous conductor. Mr. Christy resigned from the organization and the grant was never awarded.

On behalf of the Orchestra, Loretta Vargas-Betencourt, the President and General Manager, is requesting that the money be released to be used toward the salary of the new conductor, Mr. Witold Dobrzynski.

Moved by E. Palmer/Hand for approval of \$5,000 to the Melbourne Community Orchestra to be used towards the salary of the new conductor. Motion carried unanimously.

21. COUNCIL ACTION RE: Consideration of Code Review Committee recommendations, Section 3, Chapters 1 and 2.

Mrs. Poole recommended that Council wait until all the chapters have been reviewed and then conduct workshop meetings.

Mayor Buckley recommended ordinances be prepared for the next meeting on these two chapters.

Mrs. Poole stated that this is being rushed because of the pay increases for Mayor and Council. Mayor Buckley pointed out that the recommended language provides that the salary will be reviewed every five years and a comparison made with other cities. It doesn't say Council has to approve an increase.

Mrs. Poole stated that Melbourne cannot be compared with other communities. People will begin serving for pay rather than out of dedication.

Mr. Beltz said he would like to receive the information reviewed by the committee on the salary issue.

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Moved by C. Palmer/E. Palmer to have two ordinances prepared for the next meeting. Motion carried. (Mrs. Poole voted nay.)

22. COUNCIL ACTION RE: Board Appointments

a. Code Enforcement Board – one regular member.

Mrs. Poole nominated Joan Needelman.

Moved by Beltz/E. Palmer to close the nominations.

Mrs. Palmer asked about the designation of “realtor seat.” Attorney Gougelman said the statute specifies occupational groups in which members are to be drawn. As pointed out in the City Clerk’s memorandum, the provision is “whenever possible” as opposed to being mandatory.

Mrs. Poole pointed out that Mrs. Needelman has the most experience and the better attendance record. She is also employed by the Palm Bay Fire Department, which makes her a valuable asset to the board.

Mrs. Palmer agreed and suggested that Mr. Stella be considered as an alternate.

The question was called. Motion carried unanimously.

Moved by E. Palmer/Hand to appoint Joan Needelman as a regular member. Motion carried unanimously. (Unexpired, three-year term through 10/14/00)

Mayor Buckley called for nominations for the alternate member seat (vacated by the appointment of Joan Needelman appointed as a regular member).

Mrs. Palmer nominated Joseph Stella.

Moved by E. Palmer/Buckley to close the nominations. Motion carried. (Mrs. Poole voted nay.)

Moved by C. Palmer/E. Palmer to appoint Joseph Stella as the alternate member. Motion carried. (Mrs. Poole voted nay.) (Unexpired, three-year term through 7/8/02)

b. Zoning Board of Adjustment – two regular members.

Mrs. Poole said she was positive that the Zoning Board of Adjustment voted to write a letter to Council regarding the appointment of alternate members. She noted that the last meeting of the board was Mr. O’Neill’s first meeting as chairman and he was having a difficult time.

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Moved by C. Palmer/Poole to appoint Peter Kostrzewa to the seat vacated by Joe Stegner. Motion carried unanimously. (Unexpired, three-year term through 12/2/02)

Mayor Buckley nominated Brenda Burgener and Mrs. Poole nominated Jamie McKeever.

Mrs. Poole stated that it is good to have new people on the board. Mayor Buckley commented that Brenda Burgener should not have been removed from the board (November 1999); she has a great length of service and her time is of great value to the city.

Moved by C. Palmer/Hand to close the nominations. The roll call vote was:

Burgener: Beltz, C. Palmer, Hand, E. Palmer, and Buckley

McKeever: Poole

Appointed: Brenda Burgener (Unexpired, three-year term through 12/2/01)

The appointment of Peter Kostrzewa as a regular member left an alternate seat open. Mayor Buckley called for nominations. Mrs. Palmer nominated Robert Murphy and Mrs. Poole nominated Karla Torpy.

Moved by C. Palmer/Hand to close the nominations. Motion carried unanimously. The roll call vote was:

Murphy: Beltz and C. Palmer

Torpy: Poole, Hand, E. Palmer, and Buckley

Appointed: Karla Torpy (Unexpired, three-year term through 12/26/01)

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mayor Buckley reported that there are two proposals for naming a street in honor of Martin Luther King, Jr. Council Member Jackie Colon, Palm Bay, had suggested Florida Avenue. The Mayor said his suggestion is to name University Boulevard/Martin Luther King, Jr. Boulevard. With his suggestion, no one would have to change their street name unless they wanted to.

Mr. Hill noted that the letter City Council received from Palm Bay contains a misunderstanding. Palm Bay believes that Florida Avenue, from Lipscomb Street east to the end, is within the limits of Palm Bay. That is the basis of their letter. However, the street is split – the southern portion belongs to Palm Bay and the northern portion to Melbourne. In order to make a change, both cities would have to agree.

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Mrs. Poole stated that Jackie Colon revealed to her that it was not her intent to involve Melbourne.

Following a brief discussion, Mr. Beltz recommended this return as an agenda item. Recommendations should be forwarded to staff so that maps and information can be presented in the package. Mayor Buckley agreed.

Discussion continued.

Attorney Gougelman reported that the County Commission voted 5-0 to direct staff to investigate a method by which the county could protest the city's recent land use designation assigned to the recently annexed Brockerman property. Mr. Hill said he was shocked because this runs counter to everything we are trying to do to work with the county. He noted that he has made calls to the County Commissioners to discuss this issue.

Mayor Buckley mentioned that he and the City Manager spoke to a fellow who would like to conduct a symphony concert in Melbourne June 2-4 from a barge that will be moving up the Intracoastal Waterway. Discussions are underway; the group needs \$20,000 to fund the performance. The Mayor added that he is not sure whether the local community is interested in supporting this.

Mrs. Poole discussed the item scheduled on the Airport Authority agenda for approval of a maintenance hangar. She said she thought we were trying to keep clean industry in our area and the airport should spend more time trying to bring in airlines instead of building speculation facilities.

Mayor Buckley said this is a high paying industry that would promote well paid jobs in our area. The work would be done inside of a hangar. If approved by the authority, the operation would have to meet all environmental standards.

24. ADJOURNMENT

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

The meeting adjourned at 11:33 p.m.

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City Clerk – 3/24/00

Approved by Council: \_\_\_\_\_