

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
OCTOBER 24, 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 Buckley.

1. Council Member Cheryl Palmer 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, District 2
	Richard Contreras	Council Member, District 1
	Priscilla M. Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Loretta Isenberg-Hand	Council Member, District 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

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley read and presented the following proclamation:

“VFW Buddy Poppies Days”, November 10-13, 2000; accepted by Chris Pilger, Senior Vice-Commander, VFW Post 3991.

5. APPROVAL OF MINUTES - October 10, 2000 Regular Meeting

Moved by Walker/Contreras for approval. Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mr. Hill reminded Council that the annual Board Reception will be held October 25 at Front Street Civic Center, 6:00 p.m. He encouraged Council to attend and show support for our volunteer board members.

Mayor Buckley referenced the memorandum from the City Manager to add a travel request by Council Member Poole to the agenda as Item 20.1.

Moved by Contreras/E. Palmer to add Item No. 20.1 to the agenda. Motion carried unanimously.

7. PUBLIC COMMENTS

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John T. Mutschler, 4565 Grand Meadows Boulevard, acknowledged that the sidewalk and sod have been replaced next to his home following repair/replacement of a drainage pipe. He questioned why it took 4 ½ months to complete the work.

Tom Porcella, 1696 PGA Boulevard, referenced the written complaint he previously submitted regarding Richard Contreras's political signs being in violation of the Code. He submitted photographs as evidence of the violations and noted that the signs are still in place. He asked the city to enforce the law immediately.

Mr. Hill acknowledged the written complaint previously received and reported that Code Enforcement has been instructed to remove all political signs that are in violation of the City Code.

Caroline Osborne, 570 Wickham Road, Apartment 211, introduced her son and stated that he is also the son of the District 1 Council Member. She said she was asked by many people to attend the meeting because the "lies are unfit for a political office in the city."

Mrs. Walker called a point of order. Mrs. Poole stated that Ms. Osborne has the floor and a point of order is not in order. Mayor Buckley asked for quiet while he determined the point. Mrs. Walker stated that Mrs. Poole attempts to create chaos and this person does not have anything to do with Council business; this is not an agenda item. Mayor Buckley said he understands that this is not an agenda item; however, the item is public comments, therefore he will allow the speaker to continue.

Mrs. Walker asked if the speaker is under oath. Ms. Osborne said she does not need to be, but agreed if that is the wish of Council. The Mayor asked Ms. Osborne to proceed. Ms. Osborne said the facts are that she had an affair (with Mr. Contreras) for over two years and he didn't tell his wife until the end of April.

Mrs. Hand said she does not feel the comments should continue; they are slanderous remarks being brought against a Council Member. Ms. Osborne said they are not. Mrs. Walker said they are. Mrs. Hand stated that these comments could be made in private in a court – not at a public City Council meeting. Ms. Osborne asked to continue.

Continuing, Ms. Osborne said she has been experiencing retaliation and that is why she is making her comments in public in front of witnesses. Mayor Buckley said Council does not allow personal, impertinent, or slanderous remarks. He asked Ms. Osborne to state why she is here and then Council will move on.

Ms. Osborne said she is concerned about the young people of our community and that the leadership in our community isn't truthful.

Mrs. Poole asked for the floor. Mayor Buckley replied that the item is public comments, not Council comments. He added that Council has said before that it will not permit Council Members talking about other members. Mrs. Poole stated that four members of

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Council previously censured her. Mrs. Hand asked Mrs. Poole if she would like to be censured again. Mayor Buckley said that (the censure) was an agenda item. Mrs. Poole responded that she can make this an agenda item, too. Mrs. Walker replied that it would have to be approved by Council.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2000-62: (Public Hearing/Second Reading) A proposed ordinance to implement changes to the Comprehensive Plan for the designation of urban infill areas and realignment of NASA Boulevard. (First Reading 10/10/00)

Attorney Gougelman read Ordinance No. 2000-62 by title. There were no comments from the audience.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2000-62. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

9. COUNCIL ACTION RE: Contract for D. B. Lee & Grant Street Wastewater Treatment Plants Electrical Upgrades, Project No. C00317, Advanced Electrical Installations, Titusville, FL - \$228,219.00.

Mr. Hill reviewed the agenda report. The project includes a variety of upgrades at the Grant Street and D. B. Lee Wastewater Treatment Plants to improve operations and maintenance of the facilities. These improvements were identified in prior capital improvement programs separate and apart from the ongoing major capital improvements at the plants. These items are specifically electrical in nature and can be implemented in a relatively short period of time.

Proposed work includes replacing two automatic transfer switches for the standby generators at D.B. Lee. Also at D.B. Lee, a number of electrical power distribution changes will be implemented that will bring services up to code for some of the offices and trailers located there. At Grant Street, electrical upgrades include installing instrumentation that provides more efficient operator control of the aeration basin, and includes replacing two control circuit panels for the automatic transfer switch that starts the standby generators.

The consultants and staff recommended the contract be awarded to the lowest bidder, Advanced Electrical Installations, Inc. of Titusville in the amount of \$228,219.00 for Project No. C00317.

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

10. COUNCIL ACTION RE: Payment to Airport Authority for Traffic Signal Installation at NASA Boulevard and Gateway Drive - \$206,680.85.

Mayor Buckley reviewed the agenda report. This is a request to provide the city's costs associated with installing a new traffic signal and modifying the intersection at NASA Boulevard/Gateway Drive. The signal was installed as part of the Melbourne Airport Authority's contract for construction of Grumman Drive. The signal was necessitated and warranted by the construction of the GE Harris/Harris Railway Electronics Headquarters and future expansion of Northrup/Grumman.

The road project has been completed, the signal is in use, and the Airport Authority is requesting reimbursement.

The city's cost for the signal installation and intersection improvements is \$206,680.85. The Airport will be paying for the rest of the improvements, which include Grumman Drive and associated turn lanes on NASA Boulevard. The city's total amount is based on contract unit prices and actual quantities measured in place. It was felt that by cooperating with the Airport Authority, the city would benefit from grant funds available for the construction of the road. The price of the signalization and intersection improvements is reduced by \$100,000 due to the grant.

Funding is available from the Transportation Impact Fee Fund for Zone 2 (south mainland). The recommendation is for Council to authorize payment to reimburse the Melbourne Airport Authority for the signal and intersection improvements in the amount of \$206,680.85 with an appropriation of funding from the Transportation Impact Fee Fund (Zone 2).

Moved by Contreras/Walker for approval of the recommendation.

A brief discussion followed regarding the benefits of this project.

The question was called. Motion carried unanimously.

11. COUNCIL ACTION RE: Change Order No. 1 to contract for Construction of the Surface Water Plant Improvements, The Poole and Kent Company, Miami, FL - \$63,140.00.

Mr. Hill briefed Council. This change order addresses encasing concrete pipe under structures in concrete. The drawings by CH2M Hill did not show that the pipes were to be encased. The contractor asserted that it was not part of the contract to provide the encasement.

It is industry practice to encase most process piping under a structure. Many pipes enter or leave the treatment units through the bottom slab so these pipes are under the slab by

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design. The pipes are encased in concrete to prevent deflection at the pipe joints and as “insurance” because pipe failure under the structure would be extremely disruptive to the treatment process and correction would be costly.

The consultants and staff felt that the encasement was necessary. Staff, consultants, and the contractor met to discuss all the arguments relative to the contractual language, the plans, and specifications and to negotiate a change order for the encasement.

The contractor asserted that the cost of pipe encasement had not been included in his bid. The contractor further provided access to the files that had been compiled in preparing its bid and the files were reviewed by the City’s Utility Engineer. There is no indication that suppliers, subcontractors, or the contractor had included any cost for pipe encasement since it was not shown on the plans. Staff is confident that the city will not be paying twice for the encasement.

Staff negotiated a change order amount of \$63,140.00. The contractor’s original proposal was \$106,390.00. This was reduced to \$84,400.00 by redefining the pipes to be encased. The reduction is based on the negotiation and the contractor’s excluding all costs other than direct payment to other parties. This is an equitable solution.

The change order represents 0.35% of the contract amount and a small fraction of the construction contingency, which is established for such purposes. The recommendation is for approval of Change Order No. 1 to The Poole and Kent Company’s contract in the amount of \$63,140.00.

Mr. Ralls confirmed for Mrs. Poole that it would be standard practice to include this in the design; however, he noted that personally, he would not have included this in a bid because it was not shown on the drawing. It would be to a bidder’s disadvantage to bid on something not shown on the plans.

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

Mrs. Palmer asked if this would have cost less if it were done in the beginning. Mr. Ralls replied that there was no work that had to be redone. As a result of negotiations, the cost represents the cost of materials and direct costs to contractors; the prime contractor made no charges for their work.

The question was called. Motion carried unanimously.

12. COUNCIL ACTION RE: Consent Agenda

Mayor Buckley referenced the memorandum from staff requesting that item “g” be withdrawn.

Moved by Hand/E. Palmer for approval of the consent agenda, items “a – f.”

Mr. Hill elaborated on item “a.”

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The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Highway Maintenance Agreement with the Florida Department of Transportation for the Melbourne Causeway Landscaping Project.
- b. Resolution No. 1663: A resolution canceling the December 26, 2000 Regular Meeting of the City Council.
- c. Purchase of nine 2001 Ford Crown Victoria (Police Package) 4-door vehicles (@ \$20,084 each), Duval Ford, Jacksonville, FL - \$180,756.00.
- d. Supplement No. 50 to Continuing Consultant Contract for Sidewalk Improvements along Pineapple Avenue from Mathers Street to Ascension Senior Housing Complex, Frazier Engineering, Inc., Melbourne, FL - \$23,595.00.
- e. Change Order No. 1 to Canova Beach Ground Storage Tank Rehab, Project No. 98311, Indian River Industrial Contractors, Inc., Jacksonville, FL - \$7,640.04.
- f. Change Order No 1 to Simon Road 12" Waterline Replacement, Project No. 00319, Derrico Construction Corporation, Melbourne, FL - \$10,644.00.

13. COUNCIL ACTION RE: Miscellaneous bond issue matters.

- a. Payment for services as Bond Counsel in connection with the cash defeasance of the Water and Sewer Refunding Revenue Bonds, Series 1986C, Holland & Knight - \$3,500.
- b. Fee proposal to perform final arbitrage rebate calculation service for the Water and Sewer Improvement Revenue Bonds, Series 1992B, Hoyman, Dobson & Company, \$2,900.
- c. Budget action to transfer payments to the 2000 Bonds Principal and Interest accounts.

Mr. Hill briefed Council. These are several items dealing with City bond issues. These include actions on the 1986C, 1992B and 2000 Series Water and Sewer Bonds.

- Legal fees were incurred to complete the August defeasance of the 1986C Bonds to ensure that they were legally defeased.
- Since the 1992B bonds were called October 1, 2000, it is necessary to perform an arbitrage rebate calculation by November 30, 2000 and file the required IRS forms.

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- A budget adjustment is necessary to correct for debt service transfers on the 1986C Bonds and to establish the debt service line items for the 2000 Bonds recently sold.

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

14. ORDINANCE NO. 2000-63: (Public Hearing/First Reading) A proposed ordinance to change the name of Almond Boulevard to “Reverend Johnie Scott Boulevard.”

Mayor Buckley referenced two letters received from residents opposed to the name change and requesting their names be removed from the petition. The letters were submitted by Millard K. Hall, 908 E. Almond Boulevard, and Constance C. Williams, 915 E. Almond Boulevard. The memorandum from the City Manager notes that Mr. Hall’s signature was not counted on the original petition because he is not the owner of the property, and Constance C. Williams did not sign the original petition. The petition remains unchanged at 73.21% in favor.

Continuing, Mayor Buckley referenced a letter received at this meeting from Pastor Annie and Bishop Herbert Pinder, 904 E. Almond Boulevard, opposing the name change.

Attorney Gougelman read the ordinance by title. Mayor Buckley opened the public hearing.

Willie J. Pittman, 905 E. Almond Boulevard, stated that he has lived on this street for 36 years and is opposed to the name change. He said that Reverend Scott did not live in this neighborhood and he can’t think of a reason to change the name. He referenced the inconvenience the address change will cause.

Constance Williams, 915 E. Almond Boulevard, said she has lived in this area for 35 years. She stated that no one should have to go through the agony and stress of a street name change. It is difficult and causes too many problems.

Mrs. Poole said it would be better to name new streets instead of changing streets that have been named for years.

Continuing, Mrs. Williams said she is not aware of anything great that Reverend Scott did on that street. He came from the Eau Gallie area in his later years.

Following a brief discussion, the Mayor recommended that Mrs. Williams have those who are opposed send letters prior to the second reading/public hearing of the ordinance or appear at the next meeting.

Della Scott Thomas, petitioner, stated that her father was not a man of confusion; he would not want to cause stress for anyone. She reported that she previously informed the city that if anyone returned saying they did not want the change, then she would withdraw her petition.

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Moved by Poole/C. Palmer to deny Ordinance No. 2000-63 based on the withdrawal of the request by the petitioner. Motion carried unanimously.

15. COUNCIL ACTION RE: Request by the Chamber of Commerce for the City to co-sponsor the 6<sup>th</sup> Annual Harbor Festival scheduled for November 18-19, 2000.

From the Agenda Report: The Chamber of Commerce has submitted a request to conduct the Harbor Festival November 18-19, 2000 at Front Street Park. Last year the city co-sponsored this event at the request of the Chamber by providing police services, barricades, inspections and waiving the fee for use of the Front Street Civic Center. Additionally, Council authorized the closure of Front Street boat ramps during the weekend of the event.

The Chamber is requesting the city to co-sponsor this year's event by providing the same services, support, and closure of the boat ramp. The estimated cost for city services is \$3,029. If Council wishes to co-sponsor the event, the cost should be paid from the General Fund. The city's co-sponsorship will be recognized on all promotional activities.

Moved by Poole/C. Palmer for approval of the request. Motion carried unanimously.

16. SITE PLAN APPROVAL (SP-2000-06) AND ORDINANCE NO. 2000-64 (CU-2000-07): (Public Hearing/First Reading) A request for site plan approval for a retail center which will include a 105,864 square foot wholesale club (BJ's) and 54,600 square foot of additional retail space and a conditional use for an automotive service center and gas station, located west of Dairy Road and north of Palm Bay Road, on a 24.55 acre parcel. (Owner - Frank Brockerman) (Applicant – T. Hamilton; Scott Nickle, Bussen-Bayer Engineering Group, Inc. Engineer) (P&Z 10/12/00)

- a. SP-2000-06: Site plan approval for a wholesale club and additional retail space.
- b. ORDINANCE NO. 2000-64: An ordinance to implement a conditional use for an automotive service center and five service bays and gas station with six pump stands.

Attorney Gougelman read Ordinance No. 2000-64 by title. Ms. Braz briefed Council. The applicant is requesting site plan approval for a retail center, which will include a 105,864 s.f. wholesale club (BJ's) and 54,600 s.f. of additional retail space. Five out-lots are included, for four restaurants (23,400 s.f.) and a gas station. The BJ's Wholesale Club will also include an automotive service center. Both the automotive service center with five service bays and the gas station with six pump islands will need a conditional use. The total square footage of the proposed development is 186,532.

The site was part of a 65-acre annexation. Commercial/medium density residential future land use was determined in 1999. The zoning was established by Ordinance No. 99-66. The C-2 (General Commercial) Zoning was assigned to the south 800 feet fronting Palm Bay Road. The intensity of commercial land use diminishes to C-1 on the Dairy Road frontage north of this site.

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The property is bounded on the west by a gas station with County BU-1 (General Retail Commercial) zoning and vacant land also zoned BU-1 and on the east at Dairy Road by a gas station with C-C-2 (General Commercial with a conditional use for an automotive service station). The zoning to the north of the property is C-1 (Neighborhood Commercial). Within a short distance the zoning changes to R-2 (cap 10) (One-, Two-, and Multi-Family Residential) with a density limitation of 10 units per acre where we have had site plan approval for the Princeton Apartments. The Dairy Road/Palm Bay Road intersection is important to Melbourne, Palm Bay, and Brevard County.

The County is responsible for permitting access on the two roads, and is reviewing these plans. In 1997, a Preliminary Design and Environmental report was prepared for Palm Bay Road. This report recommended that Palm Bay Road be widened to six lanes and included a recommended cross section including access management recommendations necessary to maintain fluid traffic movements and to reduce conflicts. The recommendation provided for a full access median cut at the west driveway on Palm Bay Road. This is proposed with this plan. The east driveway is proposed to be a left turn into the site only, which results in the modification of the existing full access median cut that serves the Oakwood complex located in the City of Palm Bay. Permitting a full median access at this location will create substantially more conflict points, especially close to the signalized Dairy Road intersection. Providing for the directional median openings will reduce the number of potential conflict points from 36 to 12. This is an acceptable design until the six-laning project is constructed. Access to/from Dairy Road will consist of only a right-in/right-out movement.

The applicant is working with the county to design a driveway that will allow for traffic to exit onto Dairy Road heading north. This is not possible at the existing driveway location because of conflicts with the southbound left turn lanes on Dairy Road approaching Palm Bay Road. City staff has been in contact with the county and the City of Palm Bay. The applicant has indicated that a meeting has been set with the Oakwood residents for October 30. Palm Bay staff requested that the meeting be a condition of the site plan approval. Since the meeting is already planned, Melbourne staff does not believe it should be included as a condition.

A joint or cross access easement is needed along the west driveway to permit future development to access a possible signal at the full median opening. This median opening is separated by a sufficient distance to allow for signal coordination and more fluid operation of the corridor. A signal may also be installed at Riviera Boulevard approximately 1,100 feet to the west. This creates the likelihood that signals would be 1,100 feet apart from Riviera Boulevard, the west entrance of the shopping center, and Dairy Road. All driveway and median cut modifications will require approval and a permit from Brevard County Traffic Engineering.

The Environmental Impact Assessment Report describes the parcel as being primarily pine flatwoods with interspersed palmetto prairies and two isolated wetlands. The wetlands comprise 2.1 acres on site and impact an additional 1.37 acres to the west (for a total wetland impact of 3.47 acres). The applicant plans to mitigate within this drainage district and therefore the mitigation may be done on a 1:1 ratio. Resolution with St. Johns

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River Water Management District is in process and the resulting mitigation will meet their standards along with the federal regulations. The applicant has indicated that they are willing to relocate the four hardwoods on the site. Since the property will receive substantial fill, it is not likely that the pines can be saved. Clearing will occur in phases.

There is evidence of gopher tortoises and the preliminary estimate is that there are approximately 40 on site. A complete identification of the burrows will be performed and they will be relocated in accordance with an approved mitigation plan. A permit from the Florida Fish and Wildlife Conservation Commission will be required to relocate the gopher tortoises. There were no scrub jays observed on the site.

The proposed plan of development complies with the City's Comprehensive Plan and City Code. The site plan is harmonious and complimentary with adjacent uses and is consistent with ordinances applied to this property.

The Planning and Zoning Board and staff recommended approval of BJ's Wholesale Club site plan with the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the City of Melbourne 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: a) a decrease of the open space or vegetative areas on site or b) a five percent or more increase in the number of parking spaces on the site plan.
- b. The owner/applicant shall obtain approval from Brevard County to make modifications to the medians consistent with best access management practices. Only one full median opening for the site shall be permitted onto Palm Bay Road. If the County permits the retention of the existing full access median cut at Sheafe Avenue (the east access on Palm Bay Road), the site plan shall permit only a right-in/right-out movement at this driveway.
- c. The applicant shall obtain permits from the Florida Fish and Wildlife Conservation Commission to relocate the gopher tortoises on the property. Should the owner/developer discover that other endangered or threatened species are found on the property after construction begins all construction shall be suspended until appropriate permits are obtained.
- d. All hardwoods shall be relocated on site.
- e. Relocate the access to Restaurant 3 by moving it away from Dairy Road.
- f. Eliminate the access from the west entrance along the south drive or relocate it further to the north.

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The Planning and Zoning Board and staff recommended approval of the conditional uses with the findings listed in the agenda package and the following conditions:

- a. The conditional uses shall be substantially consistent with the site plan for BJ's Wholesale Club Shopping Center, consisting of a one-page plan dated July 31, 2000 and signed and sealed on 10/6/2000, prepared by Bussen Mayer Engineering of Merritt Island, Florida.
- b. No motor vehicular access shall be permitted from the BJ's gas station site to Palm Bay Road.

Mrs. Poole questioned if the city is going to continue mitigating all threatened/endangered species to the Micco scrub area.

In response to Mr. Palmer, Mrs. Braz pointed out the areas that are zoned C-1 and C-2. She noted that all of the buildings will be within the C-2 area and the retention area is zoned C-1.

Phil Nohrr, 1800 W. Hibiscus Boulevard, attorney representing Centerfront Development Corporation, reviewed the proposal and discussed the surrounding zoning. He noted that the conditional uses are needed because of the definition within our Code. He displayed the location of the gas service station on the map and said there will be no direct access from this site to Palm Bay Road. Mr. Nohrr pointed out that the proposal meets/exceeds all of our development regulations.

Mr. Nohrr stated that there will be a full ingress/egress on the westerly portion of the site. He added that they would enter into any type of reasonable access agreement with the property owner to the west; they anticipate that this will happen. He pointed out that this plan differs slightly based on staff's recommendation. They have eliminated the driveway that could cause conflicts and moved it significantly to the north. The plan has also taken into consideration staff's comments on the entrance to Dairy Road. He stressed that ultimately they will have to accept what Brevard County decides on Palm Bay Road.

Continuing, Mr. Nohrr confirmed that a meeting is planned with the residents for October 30.

Mr. Nohrr referenced the environmental report and said that Bill Kerr is present to answer questions. At present, the plan proposes a mitigation of almost 10:1 in the Micco scrub and surrounding area. That appears to be acceptable by all the reviewing agencies although final comments have not been received. Regarding the trees, he said it is their intention to relocate them. If something happens during relocation, they will replace them.

Mr. Nohrr stated that they are not interjecting new uses into the area. The area has major commercial and automotive uses. They are simply continuing with a development plan that is in the process for a major thoroughfare. Regarding BJ's, he informed Council that when they come into a community, they establish a relationship with a school and

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provide fundraising opportunities, assistance, support, etc. Last year BJ's provided assistance to over 50,000 school children. That program will be coming to our community as they become a member of our community.

In response to the Mayor, Mr. Nohrr said they agree with all stipulations.

Mrs. Poole said she is sure this is all sewn up and in the basket – it usually is when Mr. Nohrr appears before Council. She noted that we continue to please the people; however, she questioned what we are doing for the animals and birds. She concluded by saying this is the best bribe yet with all they are going to do for the schools.

Mrs. Hand asked how many people will be employed by BJ's. Mr. Nohrr replied 75 – 100.

Moved by Contreras/Hand for approval of the site plan subject to the proposed stipulations.

Mrs. Poole asked Mr. Kerr to comment on why everything must be mitigated to the Micco area.

Bill Kerr reported that environmental boundaries are not established along city lines. He described the process and noted that this mitigation is appropriate based on the biological factors.

Mrs. Hand asked Mr. Kerr to comment on a statement made earlier in the meeting about the gopher tortoises having HIV. Mr. Kerr replied that it is not HIV – it is an upper respiratory infection found to infect several populations throughout the state. It is highly communicable; however, there is no evidence to say it causes the tortoises to die an early death.

The question was called. Motion carried. (Mrs. Poole voted nay.)

Moved by Hand/E. Palmer for approval of Ordinance No. 2000-64. Motion carried. (Mrs. Poole voted nay.)

Recessed: 8:59 p.m.  
Reconvened: 9:09 p.m.

17. ORDINANCE NO. 2000-65 (Z-1999-892): (Public Hearing/First Reading) A request for a zoning change from R-1AA (Single-Family Residential) to C-1A (Professional Offices and Service District) on a .24 acre parcel located on the southwest corner of Babcock Street and Edgewood Drive. (Applicant – Shawn Parker)

Attorney Gougelman read Ordinance No. 2000-65 by title.

This is a first reading of an ordinance to implement the zoning change for Mr. Shawn Parker, on a .24-acre parcel on the southwest corner of Babcock Street and Edgewood

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Drive from R-1AA to C-1A. Last March Council denied the zoning. The applicant appealed to the Circuit Court and the *writ of certiorari* was granted without comment; therefore, there are no grounds for appeal by the city. Council must comply with the Court's direction.

Council denied the initial rezoning request on November 30, 1999. After a waiver of the six months waiting period was granted, the item returned and was again denied by Council on March 14, 2000. On both occasions a petition was received in opposition to the zoning exceeding 20%.

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. The applicant has indicated that he intends to utilize the property for an insurance office and has provided a site plan demonstrating how he will provide parking, landscaping, and buffering.

The Planning and Zoning Board and staff recommended approval based on the findings listed in the agenda package.

Mrs. Poole said she believes this is a down zoning of the property. She referenced the petitions submitted by the residents opposed to this rezoning and stated that people no longer have rights. She concluded by saying regardless of what the judge says, she won't vote for this.

Mrs. Palmer said there is no way this property could be used residentially. She noted that as she previously stated, Mr. Parker's use is probably the quietist and least intrusive use the residents could wish for.

Mayor Buckley opened the public hearing. There were no comments.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2000-65 consistent with the order of the Circuit Court. Motion carried. (Mrs. Poole voted nay.)

18. COUNCIL ACTION RE: A request for the award of \$150,000 of SHIP funds to Habitat for Humanity for the implementation of the Purchase Assistance and Sweat Equity Strategy.

From the Agenda Report: On July 25, 2000, Council approved an amendment to the city's 1998-2001 SHIP Housing Assistance Plan (HAP), the city's planning document for the State Housing Initiatives Partnership (SHIP) Program. The amendment added a "Purchase Assistance with Sweat Equity Strategy" to the HAP, making it possible for the city to subsidize the purchase of new homes by very low-income homebuyers who were participating in a sweat equity program. The Florida Housing Finance Corporation approved the amendment on August 10, 2000. Per SHIP regulations, staff advertised the availability of 2000-2001 SHIP funds in the newspaper on August 28. Only one proposal was received, a proposal from South Brevard Habitat for Humanity, Inc. (SBHFH).

Council previously approved a 2000-2001 budget for the Purchase Assistance with Sweat

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Equity Strategy of \$150,000. If awarded these funds, SBHFH will be able to assist 10 very low-income homebuyers at a maximum award level of \$15,000 each. These funds are leveraged with \$420,000 to be raised by SBHFH through the use of volunteer labor (including the “sweat equity” of the homebuyer and other Habitat homebuyers), fundraisers, donations from individuals and businesses, and church and corporate sponsorships. City funds are additionally leveraged by \$8,400 in homebuyer contributions. The issue of garages on the Habitat houses has been discussed previously. Staff has indicated it will not support variances on garages on lots less than 60 feet wide. Habitat is encouraged when possible for narrower lots to utilize grant funds so as to offset the additional costs of garages.

Habitat for Humanity will reinvest the \$15,000 it receives from every sale back into its program. As Council is aware, the organization targets tenants who are living in substandard housing to train and prepare them for homeownership. Further, Habitat has a commitment to creating new, affordable housing stock in a distressed Melbourne neighborhood known as the Booker T. Washington neighborhood (formerly the North Target Area). Making this award to South Brevard Habitat for Humanity is a rare opportunity to partner with a private, non-profit housing agency to meet the needs of very low-income households for decent, safe, and affordable housing. It also provides an occasion to bring initiative, enterprise, and revitalization through new private sector housing development into the Booker T. Washington area. Through this partnership, the City of Melbourne is assisted in meeting the goals identified in the 2000-2005 Consolidated Plan.

The recommendation is that South Brevard Habitat for Humanity, Inc. be awarded \$150,000 for the implementation of the Purchase Assistance with Sweat Equity Strategy, and that the City Manager be authorized to execute an agreement with South Brevard Habitat for Humanity, Inc. for SHIP funds.

Moved by Poole/Walker for approval of the recommendation.

Mrs. Palmer asked if all the money is going to be used in the Booker T. Washington area. Mr. Hill said that is the expectation.

Kim Gabriel, Habitat for Humanity, thanked Council for its support. She noted that Habitat’s goal is to ensure that every low-income person has simple, decent, affordable housing.

The question was called. Motion carried unanimously.

19. COUNCIL ACTION RE: Statewide Mutual Aid Agreement.

From the agenda report: Since 1994, the city has participated in a Statewide Mutual Aid Agreement with the Florida Department of Community Affairs (FDCA). This is a critical part of the city’s disaster preparedness and a valuable resource for recovery from any emergency. FDCA has recently updated the agreement and requested our renewal in the program that augments emergency resources in a cost effective and timesaving manner through the implementation of mutual aid agreements. The Statewide Mutual

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Aid Agreement was revised due to lessons learned from problems that arose since its inception in 1994.

Some of the major differences in the new Statewide Mutual Aid Agreement are:

- There is no modification to sign along with a new agreement as before.
- The new agreement included governmental entities of every description.
- The new agreement makes use of binding arbitration to settle billing disputes between parties.
- No participating party may hire employees in violation of the employment restrictions in the Immigration and Nationality Act as amended.

Moved by E. Palmer/Poole for approval of the Mutual Aid Agreement. Motion carried unanimously.

20. COUNCIL ACTION RE: Board Appointments

- a. Building and Construction Advisory Committee – one regular member

Moved by E. Palmer/Poole to appoint Steve Gailey. Motion carried unanimously.  
(10/24/00 – 8/8/03, unexpired three-year term)

- b. Citizens' Advisory Board – one regular member and two alternate members

Regular Member:

Moved by Hand/Contreras to appoint Arthur Derico. Motion carried unanimously.  
(10/24/00 – 11/11/01, unexpired three-year term)

Alternate Member:

Moved by Walker/E. Palmer to appoint George C. Paul. Motion carried unanimously.  
(10/24/00 – 11/11/03, unexpired term plus full three-year term)

- c. Golf Courses Advisory Board – two regular members

Moved by E. Palmer/C. Palmer to reappoint John Francey. Motion carried unanimously.

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

(11/9/00 – 11/8/03, three-year terms)

Added to the agenda:

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- 20.1 COUNCIL ACTION RE: Request of Council Member Poole to attend the Florida League of Cities Policy Committee Meeting, October 27, 2000, Lake Buena Vista, FL

Mr. Palmer stated that he is also on a policy committee and will need authorization to travel.

Moved by Buckley/Poole for approval of the travel requests by Vice Mayor Palmer and Council Member Poole. Motion carried unanimously.

21. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Hand referenced a concern she received regarding FIT's plans for a special four-day event beginning October 25. Vice Mayor Palmer said he has been communicating with the organizer of the event and is working towards having the flight pattern changed so that surrounding neighborhoods will not be disturbed.

Mrs. Poole said that Council needs to look at a serious situation because we have a representative on Council who... (Mrs. Poole did not finish her sentence because a point of order was called.)

Mrs. Hand called a point of order and said there should be no further discussion. Mrs. Poole replied that she listened to Council "rip her up" for three solid hours (when she was censured). She asked Mrs. Hand if she believes in adultery. Mrs. Walker called a point of order. Discussion continued. Mayor Buckley said he would entertain a motion to adjourn.

22. ADJOURNMENT

Moved by Hand/Walker to adjourn. No vote taken. The Mayor declared the meeting adjourned.

The meeting adjourned at 9:39 p.m.

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City Clerk – 11/1/00

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