

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

1. The invocation was given by Pastor M. Spivey, Grace Bible Sanctuary.
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 a proclamation recognizing the “100<sup>th</sup> Anniversary of St. Paul’s United Methodist Church” (November 18, 2000) to Pastor Eric Hamm and John Woodward.

Mayor Buckley presented a certificate to Jeff Downs in recognition of his outstanding volunteer public service with the Neighbors Against Crime Program.

The Mayor presented a plaque to Amy Elliott in appreciation for her service as a member of the Board of Trustees of the Municipal Police Officers’ Retirement Trust Fund, October 1986 through October 2000.

5. APPROVAL OF MINUTES - Regular Meeting - October 24, 2000

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

6. CITY MANAGER’S REPORT

Mr. Hill referenced the status report distributed on the D. B. Lee Wastewater Treatment Plant exploratory well construction and aquifer exemption plan. He noted that staff anticipates returning with a recommendation for action at the November 28 meeting.

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7. PUBLIC COMMENTS

Tom Porcella, 1696 PGA Boulevard, presented Council Member Poole with a book of newspaper clippings from March 21 through November 9. He said that it depicts the trials and tribulations of serving on the Melbourne City Council. He also presented Mrs. Poole with the “Freedom of Speech” award from the Advocates of Free Speech.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2000-59 (Z-2000-901): (Public Hearing/First Reading) An ordinance rezoning a .636-acre parcel from C-2 (General Commercial) and R-2 (Cap 6) (One-, Two-, and Multi-Family Residential with a cap of six units per acre) to R-2 (Cap 4) (One-, Two-, and Multi-Family Residential with a cap of four units per acre) located on the south side of Young Street, east of U. S. 1 in Houston’s Addition Subdivision. (Owner/Applicant - F. Michael and Patricia R. Henry) (Postponed by Council 8/22/00)

City Attorney Paul Gougelman read the ordinance by title. Mayor Buckley referenced the petition of objection received from property owners representing 20% or more of the area within 500’ of the rezoning. The petition is valid and will require a 6/7 vote (on second reading).

Mrs. Braz explained that the applicant requested a rezoning on a portion of the property from C-2 (General Commercial) to R-2 (Cap 6) (One- Two- and Multi-Family Residential with a cap of six units per acre). The remainder of the property is already R-2 (Cap 6).

This property was part of the original Eau Gallie Yacht Basin. The yacht basin was granted an inconsistent use designation when the Comprehensive Plan was originally adopted in 1988. The pre-Comp Plan zoning (C-2) was retained on nearly all of the yacht basin property. The land use on both the C-2 and R-2 (Cap 6) portion of the property is Low Density Residential. In 1998 the owner was given permission by the City Council to create four lots without platting. There were to be two residential parcels, a parcel on the north to be purchased by the church (St. John’s Episcopal) and the remaining yacht basin/boat works property. The church recently rezoned a portion of Lot 3 located immediately to the west from C-2 to R-2 (Cap 6).

The owner/applicant would like to construct his home on the property and needs a change in zoning to proceed. This request will create a zoning line that matches the proposed property line of the single-family parcels and reduce the area of the property zoned with the inconsistent C-2 zoning. The proposal will not create non-conformity with the commercial site or the proposed residential sites. The proposed zoning change is consistent with the adopted land use and identical with other zoning in the area. The property to the east is zoned R-1AA (Single-Family Residential).

At the Planning and Zoning Board meeting, one neighbor spoke in opposition indicating concern that R-2 (Cap 6) would allow for more than one unit. The applicant stated that he intends to construct a single-family home with a mother-in-law apartment that could later become a guesthouse. He presented a plan of the house he intends to construct.

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Mr. Henry was willing to limit the density to four units per acre, which would allow no more than two units. (The applicant's acreage is just under the square footage needed for three, single-family R-1AA lots.)

The Planning and Zoning Board and staff recommended approval of Z-2000-901, changing the zoning from C-2 (General Commercial) and R-2 (Cap 6) to R-2 (Cap 4) on the .636-acre portion with the findings listed in the agenda package.

Mrs. Braz referenced the petition and said the signers state that they are not opposed to R-2 zoning with a limit of one family dwelling unit on the property. The concern is that the applicant would like to construct a home and guesthouse; the neighbors want only one unit. She added that this is very confusing since many of the homes along the river already have a guesthouse. A change in density is not a change in zoning; therefore, the 20% rule will not affect a change from R-2 (Cap 6) to R-2 (Cap 4). Mrs. Braz stressed that the property has a low-density land use and should be changed from the non-conforming C-2 zoning to residential.

In response to the Mayor, Mrs. Braz displayed on the map the other homes in the area that she is aware of that have guesthouses.

Mrs. Poole pointed out the property to the east zoned R-1AA and asked why this classification is not being requested. Mrs. Braz said they would have trouble meeting the setbacks and would not be able to have a guesthouse with the R-1AA zoning.

Mayor Buckley opened the public hearing.

Kendall Tucker, 583 and 589 Young Street and Ed Tucker, 587 Young Street, addressed Council. Ms. Tucker stated that when she owned the yacht basin, the property was subdivided and she sold this parcel to the Henry's. She added that they were led to believe by staff that since the commercial zoning was non-conforming, there would be no problem rezoning to R-2. The property lines were designed based on that statement because of the setbacks. Ms. Tucker reported that she owns the other portion that will be rezoned R-2. Therefore, she would be the direct neighbor and she has no objections.

Mr. Tucker informed Council that this has been the Henry's plan since they bought the property. They have lived in the community their entire lives. He recommended Council review the house plans and stated that their home would conform to the neighborhood. Mr. Tucker stressed that the Henry's property cannot be seen from the river, nor can it be seen from anyone else's property. He concluded by saying R-2 (Cap 6) is the zoning they were told they could have. Under that premise, the Henry's have been planning their home for the past 1 ½ - 2 years.

Karl Kiser, 551 Young Street, stated that he is directly east of this property and will have view of the new house. Also, he has seen the plans and is 100% in support of the request. Mr. Kiser stressed that he, the Tucker's and the yacht basin will be the only properties with a view of this house. The request will make the property consistent with the Comprehensive Plan; therefore, the city should approve the rezoning request. He

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added that his property has a guesthouse as do other adjoining properties. Mr. Kiser concluded by saying that the people who circulated the petition won't meet with the Henry's; in his opinion, the petition is bogus.

Chuck Baird, 587 Young Street, stated that he is one of the owners of the Eau Gallie Yacht Basin. He said all of the owners of the yacht basin are in firm support of this request. He asked for approval of the rezoning and said that this will be a better zoning than the current zoning.

Bill Potter, Attorney representing the petitioners in opposition to the request, stated that the people who object believe it would be a disadvantage if the applicant were to build more than one home on his property. They are opposed to a two-unit dwelling. He agreed that those opposed have not seen the house plans; however, he pointed out that if the rezoning is granted, the applicant is not bound to do anything in accordance with those plans.

Mr. Potter continued and said Council waived the platting requirements when the property was divided into four lots based on the representation that only one, single-family dwelling unit would be built on each parcel. Mr. Potter added that assuming the applicant is sincere in wanting to have a single-family dwelling unit with a guesthouse, it seems the rezoning could be granted with a condition that only one, single-family home with a guesthouse be built and future rental would be prohibited. If that happened, his clients would withdraw their objection.

Mr. Gougelman said this seems like a complicated solution and he would need to review this prior to second reading. He said Council could continue the first reading, or pass this on first reading and instruct him to work with Mr. Potter towards an arrangement prior to second reading. Mr. Potter said this would be satisfactory.

Mrs. Walker said there are guesthouses in the area and the people who live adjacent to this property do not object; therefore, it seems ridiculous for someone who is not adjacent to object.

Mrs. Poole stated that the guesthouses are non-conforming. Allowing another one to be built is not what the Comprehensive Plan intended.

Michael Henry, 240 Avenida Del Sol, Indialantic, described the guesthouse as a mother-in-law cottage for guests or family. It will be approximately 800 – 900 s.f. In response to Mr. Palmer, he said it is his intention that the property not be used as a rental. He added that he would be agreeable to a stipulation that the property not be rented or leased.

Mr. Contreras said he has concerns about a stipulation that would bar future heirs and assigns from renting the property. Council Members Walker and Hand agreed.

A brief discussion followed on the procedure that should be followed.

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Moved by C. Palmer/Walker for approval of Ordinance No. 2000-59 with the understanding that by second reading staff would work with the applicant and Attorney Potter towards a condition of approval that would be acceptable to the residents who submitted the petition of objection.

Mr. Palmer disclosed that he visited the property and noticed that it is odd shaped. He added that he has talked with Mr. Davis who lives in the neighborhood and is opposed to the change in zoning. Mr. Palmer cautioned that we do have a valid petition and the pros and cons need to be discussed with all involved.

The question was called. The roll call vote was:

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

Nay: Poole and E. Palmer

Motion carried.

9. ORDINANCE NO. 2000-64 (CU-2000-07): (Public Hearing/Second Reading) An ordinance implementing a conditional use 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 including 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) (First Reading 10/24/00)

Attorney Gougelman read Ordinance No. 2000-64 by title. There were no comments from the public.

Mrs. Poole questioned the wetland mitigation (approved as part of the Site Plan on October 24 by Council) and asked if it will be done on a 1:1 ratio or 10:1 ratio. She said that the write-up was not clear. Mrs. Braz said the St. Johns River Water Management District sets the mitigation requirements.

Mayor Buckley referenced the applicant's request to postpone this item until November 28.

Moved by Hand/Contreras to postpone this item until November 28. Motion carried unanimously.

10. ORDINANCE NO. 2000-65 (Z-1999-892): (Public Hearing/Second 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) (First Reading 10/24/00)

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Attorney Gougelman read Ordinance No. 2000-65 by title. There were no public comments.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2000-65.

Mrs. Poole said she is concerned that a three-judge panel made this decision, yet the people who have lived in the neighborhood for years had no say.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried

NEW BUSINESS

11. RESOLUTION NO. 1665: A resolution reporting the outcome of the general municipal election conducted November 7, 2000, and setting forth the terms of the Mayor and three Council Members elected.

Mr. Gougelman read Resolution No. 1665 by title.

Moved by Poole/E. Palmer for approval of Resolution No. 1665. Motion carried unanimously.

12. OATH OF OFFICE AND SEATING OF:

- a. Mayor-Elect John Buckley
- b. Council Member-Elect Richard P. Contreras, District #1
- c. Council Member-Elect Pat Poole, District #3
- d. Council Member-Elect Cheryl Palmer, District #5

Attorney Gougelman administered the oath of office to each member. (The oath of office for each member is attached to the official minutes.)

At this point, Mrs. Poole presented Tom Porcella with her 10-year City of Melbourne employment pin in recognition of his volunteer service as a board member and attendance at City Council meetings.

13. COUNCIL ACTION RE: Appointment of Vice-Mayor.

Mrs. Walker nominated Cheryl Palmer.

Moved by Walker/Contreras to close the nominations. Motion carried unanimously.

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Moved by Hand/Walker to appoint Cheryl Palmer as the Vice-Mayor. Motion carried.  
(Mrs. Poole voted nay.)

14. COUNCIL ACTION RE: Agreement with Melbourne Airport Authority for reimbursement of the cost of relocating a 16-inch waterline that crosses Airport property, in the amount of \$129,969.00.

Mr. Hill reviewed the agenda report. This is a proposal to share in the cost of relocating a 16-inch waterline that crosses Airport property. The line runs between NASA Boulevard and Hibiscus Boulevard. It passes through the old landfill that is believed to have been operated after the line was in the ground. It also passes through the site that the Airport Authority has leased to JDS Uniphase for its new facility. The pipeline is in conflict with the first phase. There is no known utility easement for this waterline.

The existing waterline is approximately 40 years old and has an anticipated life of 60 years. The city has benefited from the use of the pipeline for two-thirds of its life and, in theory, would replace it in about 20 years and bear the total cost. To relocate/replace the line now, the Airport Authority should be expected to finance the value of the remaining one-third of its life.

The cost of the waterline construction and related engineering fees is \$194,953.50. The city's two-thirds share is \$129,969.00 and the Airport's one-third share is \$64,984.50.

The recommendation is for Council to authorize reimbursement to the Airport Authority for the city's share of the waterline relocation costs in the amount of \$129,969.00 and establish a budget of \$140,000.00 to provide for the payment and to include a contingency for any unforeseen costs during construction.

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

15. COUNCIL ACTION RE: Task Order No. 2 to contract for Harlock Road Water Main Extension, Project No. 97215, Hazen & Sawyer, Boca Raton, FL – \$88,840.00

From the agenda report: This is a proposed amendment to Hazen & Sawyer's contract for water distribution system improvements. Hazen & Sawyer was the firm selected through the competitive selection process to provide engineering for a new water distribution master plan and for two defined capital improvement projects. The master plan was Task Order No.1. This project is Task Order No. 2.

Hazen & Sawyer has completed the modeling for the water distribution system master plan and submitted the report. The modeling confirms that the scheduled project to tie water mains from the plant to the watermain in Wickham Road is needed as a system improvement. This project will involve constructing a new 18" waterline up Harlock Road from Lake Washington Road to Post Road where it will tie into existing lines at Windover Farms. This will be complemented by the line being constructed through the Grand Haven Subdivision by the developer. The city is participating in the cost of upgrading the

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size of that line. When completed, these lines will provide a major loop in the system that will improve pressure and water quality.

Staff recommends proceeding with this project now due to the significant development and increasing water demands in the north service area. The recommendation is for approval of Task Order No. 2 of the Hazen & Sawyer contract for Harlock Road Water Main Improvements in the amount of \$88,840.00.

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

16. COUNCIL ACTION RE: Consent Agenda

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

The consent agenda was approved as follows:

- a. Annual contract for Payroll System and Human Resources Continuing Maintenance and Support Services, Cyborg Systems, Chicago, IL - \$22,813.18.
- b. Purchase 18 vehicle items for the Fleet Management Division from four dealers, for a cost of \$433,432.00.
- c. Purchase of 10 Scott Air Paks and 17 Scott Cylinders for the Fire Department, Safety Equipment Company, Orlando, FL - \$30,895.00.
- d. Purchase of an ISG K-90 Talisman Thermal Imaging Camera and accessories for the Fire Department, NAFECO, Inc., Decatur, AL - \$20,623.00.
- e. Resolution No. 1664: A resolution to authorize application to the Florida Department of Community Affairs for both cycles of the Emergency Management Preparedness and Assistance Trust Fund (EMPA) grants.
- f. Fire Training Agreement between the City of Melbourne and the Town of Indialantic.
- g. Municipal Lane Alley Paving, Regrading, Project No. 98110, Certified General Contractors, Melbourne, FL – \$35,499.00.
- h. Supplement No. 51 to Continuing Consultant Contract for Greens Renovation at Melbourne Golf Course, Project No. C01400, Frazier Engineering, Inc., Melbourne, FL - \$23,160.00.
- i. Additional funding under Purchase Order POMS00005029, for Eau Gallie Boulevard Transmission Sewer Line, Project No. C00310, Madsen-Barr/Phillips Utilities, Longwood, FL - \$24,844.70.

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j. Right-of-way Use Agreement with Georgiane Buckley to use the Sun Circle Drive right-of-way in order to provide adequate parking on the site of a planned office.

17. ORDINANCE NO. 2000-66 (A&V 237): (Public Hearing/First Reading) A request to abandon and vacate a 4-foot by 65-foot portion of a public utility and drainage easement along the western property line of Lot 10, the Sanctuary Subdivision, Phase III. (Applicant – Mohsen M. Zakeri)

Mr. Gougelman read Ordinance No. 2000-66 by title. This is the first reading of a proposed ordinance to abandon and vacate a portion of a public utility and drainage easement in the Sanctuary Subdivision. This ordinance provides a revised legal description of a 4' by 65' portion of an easement that was previously identified in A&V #234 and vacated by Ordinance No. 2000-37 passed by Council on July 11, 2000.

A legal, metes and bounds description of the 4' by 65' area to be vacated was written by Engineering staff based on the information provided in the request. The property owner's surveyor has provided a slightly different legal description, which is based on the actual location of the house. The surveyor's description has been checked and found to be accurate. The owner is concerned that a very small portion of his house now lies outside the area vacated in the previous ordinance. This is all the result of the starting point for defining the vacated area in this pie-shaped lot being different by 0.14 feet and the bearing of the easement being different by about one-half of one degree. No utilities or drainage systems will be impacted by the minor change in the vacated area of the easement.

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

Moved by Hand/Walker for approval of Ordinance No. 2000-66. Motion carried unanimously.

18. FINAL PLAT APPROVAL (SD-1998-03A/FOREST CREEK PHASE 2): (Public Hearing) A request for final plat approval of a re-plat of Tract "M" of Forest Creek Subdivision, Phase 1 for 63 lots located east of Dairy Road and north of Florida Avenue on a 23.19-acre parcel. (Owner – Forest Creek Development Corporation) (Applicant – Ben Jefferies, Roy Pence) (Representative – Bill Alcock) (P&Z 10/26/00)

Ms. Braz briefed Council. The site of Phase 2 is part of the initial plat, covering 23.19 of the 69.37 acres of the subdivision. The first phase was approved May 27, 1998, consisting of 93 lots. The streets are private although emergency and pedestrian connections to the public streets are provided. Phase 1 is complete.

The adopted future land use on the re-platted property is low-density residential and the zoning is R-1AA (Single-Family Residential).

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There will be three tracts dedicated by this plat. Tract "A" consists of a tract encompassing the private streets and matches up to Tracts "R" and "Q" from the Phase 1 plat to complete the private street system. Tract "L" is a drainage and retention easement tract that connects, stores and conveys water from off-site and on-site sources. It is subject to maintenance and usage agreements with Brevard County and the City of Melbourne; and proposed Tract "L" will be owned and maintained by the homeowners' association. The drainage conveyances into and out of proposed Tract "L" are to be maintained by the City of Melbourne. Tract "L" should be renamed to Tract "O" to avoid confusion with Tract "L" of Phase 1 and Tract "A" should be renamed Tract "P" to avoid confusion with Tract "A" of the Phase 1 plat.

The proposed final plat of Phase 2 complies with the city's Comprehensive Plan and Land Development Code, and is consistent with the approved preliminary plat. The final plat is harmonious with and complimentary to the adjacent uses.

The Diplomat Drive right-of-way extension south to connect with Spring Oak Drive will not be constructed at this time. The Forest Creek Homeowners' Association will own this portion of the right-of-way. Should the streets in this development convert from private streets to public streets, the Homeowners' Association will be required to construct the remainder of Diplomat Drive within this subdivision and connect with the existing Diplomat Drive prior to the city accepting maintenance responsibility.

Surveyors Notes #7 and #8 will require revision to specifically indicate that the Homeowners' Association will own and maintain the improvements in Tract "L" and that the city will maintain a drainage conveyance easement across Tract "L".

The Planning and Zoning Board and staff recommended approval of SD-1998-03A, Final Plat, as prepared by Gordon & Associates Surveyors & Mappers, Inc., of Cocoa, Florida, with the following conditions:

- a. The owner/applicant shall provide a performance bond, letter of credit or other acceptable form of security as required by City Code, Chapter 29, Section 29-5(c)(4)(c), guaranteeing funds in the amount equal to 110% of the cost of the uncompleted and non-accepted subdivision improvements.
- b. Proposed Tract "L" shall be renamed as Tract "O", Tract "A" shall be renamed Tract "P", and such tracts shall be conveyed by warranty deed to the Homeowners' Association. Deeds conveying these tracts shall be recorded with the final plat.
- c. Prior to recording the final plat, the owner/developer shall execute an amendment to the Stormwater Maintenance Agreement in form and substance acceptable to the City Manager and City Attorney.
- d. The owner/developer shall convey, by bill of sale, and grant an easement in favor of the city for all water and sewer lines and other city maintained public utility lines

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within the private street sections and within other public utility easements of the plat to the City of Melbourne.

- e. A current title opinion will be required prior to recordation of the plat.
- f. An amendment to the covenants and restrictions incorporating the lots and tracts of Phase 2 shall be recorded with the plat.

Mrs. Poole recalled that the people who live on Diplomat Drive objected to the connection to this development. She asked who would make the decision in the future. Mrs. Braz said the eventual decision would be decided by whether or not the city accepts the streets. It is her understanding that it would take a vote in favor by every homeowner because they would all have an interest. There is a slim chance that several hundred people would agree on this.

In response to Mr. Palmer, Mrs. Braz clarified the purpose of stipulation “b” and said the revisions would be made on the plat before it is recorded.

Bill Alcock, 3115 Dixie Highway, representing Forest Creek Development Corporation, agreed with the stipulations. Responding to Mr. Contreras, he explained that the extension of Diplomat Drive would not be paved. It will be a grassed open area and they intend to provide a berm with landscaping.

Moved by C. Palmer/E. Palmer for approval of SD-1998-03A, final plat approval for Forest Creek Phase 2, subject to the proposed stipulations. Motion carried unanimously.

19. PLAT AMENDMENT (SD-1993-08A/POINCIANA RIDGE): (Public Hearing) A recommendation to amend Note #9 on the plat regarding fencing in the drainage easements in the subdivision located north of Royal Poinciana Drive and west of Croton Road on an 8.56-acre parcel. (Requested by Poinciana Ridge Homeowner’s Association/City of Melbourne) (P&Z 10/26/00)

Ms. Braz briefed Council. The Poinciana Ridge Homeowners’ Association has asked for the city’s suggestion of how to solve a problem regarding “private” drainage easements in the subdivision.

When the subdivision was platted it contained a note that limited placement of fences on certain jointly public and private drainage easements. Included in those easements are areas, which the city would typically allow placement of fences if they were wholly “public” easements. These include certain side yard areas provided as access to retention ponds. At least one fence has been built in a “private” easement.

Since the restrictive note was included in the original plat, the City Council would have to take action to revise the restriction. The Homeowners’ Association does not wish to have fences in the wet pond, but it does not object to the locations that are dry as long as there is access to maintain the easements.

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After review of the plan, staff has proposed the following:

Existing language:

9. Fencing:
  - a. Fencing of the public easements is regulated by the City Code, Appendix D, Chapter 9, Section 9.47(d)
  - b. Fencing is prohibited within the private drainage easements as shown hereon.

Proposed Language:

9. Fencing is not permitted in private drainage easements unless the area is piped. All fencing in utility easements (public and private) must allow access for maintenance and if the fence is removed or damaged in order to obtain access for maintenance, it shall be the responsibility of the property owner to repair or replace the fence.

The Planning and Zoning Board and staff recommended approval of the revised Plat Note 9.

Mrs. Hand declared a conflict of interest because she is the President of the Homeowners' Association. Mr. Palmer disclosed that Sam Lopez (subdivision resident) asked for his help in solving this problem.

Moved by E. Palmer/Contreras for approval as recommended. Motion carried unanimously. (Six votes – Mrs. Hand abstained from voting.)

20. COUNCIL ACTION RE: Sale of city property located at 1115 Line Street to Epik Communications of Orlando, Florida for \$30,120.

Mr. Hill briefed Council. Epik Communications contacted the city in late August about purchasing two city-owned properties. The properties are located at the corner of Line Street and the FEC Railway right-of-way. They were both purchased with CDBG funds, one in 1978 for \$9,800 as a part of a relocation/demolition project and the other in 1985 for \$12,300 for a street widening. After using parts of each lot as intended, both of the parcels were advertised for sale in 1989; all offers apparently fell through. The combined property market value, according to the Brevard County Property Appraiser valuation for 2000, is \$15,480.

Upon receipt of written confirmation from Epik Communications to begin negotiations for the purchase of the properties, staff reviewed the location of the properties with respect to any planned current or future use. The Purchasing Agent was directed to take bids in accordance with established policies after no current or projected use was identified.

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A sole bid was submitted by Epik Communications of Orlando, Florida offering the amount of \$30,120 for the properties. Following the award, the City Attorney's office will prepare and execute the necessary sale documents. Funds received from the sale must revert to the city's Community Development Block Grant Program. This will allow reappropriation by Council for other city projects.

Moved by Poole/E. Palmer for approval of the sale of the Line Street properties to Epik Communications for \$30,120 and approval of the draft contract for purchase and sale with the terms substantially as presented. Motion carried unanimously.

21. COUNCIL ACTION RE: A request by the Brevard Symphony Orchestra for waiver of Auditorium rental fees in exchange for their performance at the annual Fourth of July Celebration at Front Street Park including providing the stage, lighting and sound system for the event.

Mayor Buckley briefed Council. On February 14, 2001, the Brevard Symphony Orchestra (BSO) will hold a fund raising event at the Melbourne Auditorium. The Orchestra has requested consideration of waiving the rental cost of the Auditorium for this event. In return for the waiver, the BSO has offered to once again perform at the Fourth of July Celebration at Front Street Park and furnish state of the art stage, lighting and sound system for use throughout the day.

Historically the Orchestra has performed at the annual Fourth of July Celebration. Last year the city honored their request to waive the Auditorium fee and in return they provided the necessary equipment for the July event, which the city has been unable to do due to the considerable rental cost. The Orchestra has been very generous in the past by letting the city use the stage, etc., throughout the day for all other groups who perform. The Orchestra's performance is very popular among those who attend and is truly one of the highlights of the event. The costs are outlined in the agenda report.

Moved by Poole/Hand to waive Auditorium rental fees for the Brevard Symphony Orchestra's February 18, 2001 fund raising event in exchange for their performance at the annual Fourth of July Celebration at Front Street Park including providing stage, lighting and sound system for the event. Motion carried unanimously.

22. COUNCIL ACTION RE: Board Appointments

- a. Citizens' Advisory Board – three regular members

Mayor Buckley reported that the current members would like to be reappointed and there are no other applications on file.

Moved by Poole/C. Palmer to reappoint Virginia Cawley, Patricia Merrill, and Pat Simpson. Motion carried unanimously. (Terms: November 12, 2000 through November 11, 2003.)

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- b. General Employees' and Special Risk Class Employees' Pension Plan Board of Trustees – confirmation of fifth member as ministerial duty

Moved by E. Palmer/Poole to appoint Michele Ennis as the fifth member. Motion carried unanimously. (Term: December 3, 2000 through December 2, 2002)

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Attorney Gougelman updated Council on the Cyberfest 2000 event, the Palm Bay water reserve area litigation, and the Harbor City Volunteer Ambulance Squad litigation.

Regarding Cyberfest, the city intends to place an anti-rave ordinance on the agenda for Council's consideration. It is styled in the nature of a dance hall and exhibition ordinance. That concept has been used in the larger cities throughout the state. Along with that, we will need to tighten our noise regulations and are currently attempting to retain an expert in acoustics engineering.

The city has an outstanding bill due from Cool World, the promoter of the Cyberfest 2000 event. A letter for demand has been sent to the promoter, Sason Parry. He has been given 15 days to respond. Mr. Parry has called and said he would like to work out a solution to this. If we are not able to reach a solution, we will file action in circuit court against Mr. Parry.

Mr. Hill added that part of the \$15,000-plus that is due is associated with undercover police services. That will probably be an area of compromise. Additionally, the city will be receiving more than the amount owed as a result of forfeitures from the arrests.

Attorney Gougelman briefed Council on the water reserve area issue. He noted that the three City Managers, Hill, Ryan and Nanni, met and came to some understanding of how they felt they were going to be able to recommend a solution to their respective City Councils. A settlement agreement was drafted and forwarded to Brevard County because they intervened. An objection was received from a County Commissioner; therefore, the county was not particularly open to the agreement. Now that we are past the elections, we intend to recirculate the agreement.

Mr. Gougelman added that Palm Bay is upset that in the meantime, the City of Melbourne has extended its water line down Simon Road. He noted that during a meeting, the Palm Bay City Manager was advised by Mr. Hill that we intended to proceed with that installation.

Mr. Hill reviewed the HCVAS litigation. He noted that after discussions, they determined that \$125,000 would result in a release on any claim to the property. It was contingent on the squad conveying the disputed piece, the foundation piece, and the third piece, which has previously been discussed. The city would receive the properties and have a developable piece of property. Discussions broke down as a result of misunderstanding of what the offer would include. We had a court requirement to meet with a mediator. We did that and bottom line, the city thought \$125,000 would be a reasonable amount.

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Continuing, Mr. Hill noted that the squad has plans to make a large contribution towards a substantial piece of equipment for training of paramedics. In doing that, they would like former members of the squad to be able to use the equipment for free for a two-year period. At this point, it is unclear where the equipment would be located. They agreed to include city employees in the use of the equipment. We have established that would be worth \$5,000 per year for a two-year period for training that we would otherwise have to provide.

Additionally, there have been discussions of the squad returning a portion of the money to the city as a “donation” towards purchase of one of the rescue units (currently budgeted). At this point, we are trying to work out the details of this agreement and are hopeful to return on November 28 with an agreement. We feel this is appropriate, especially since there is a risk involved with whether we would prevail on the reversionary clause.

24. ADJOURNMENT

Moved by Poole/Walker to adjourn. Motion carried unanimously.

The meeting adjourned at 9:22 p.m.

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City Clerk – 11/22/00

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

Attachments to official minutes: Oath of office for re-elected members (Item 12)  
Memorandum of voting conflict form (Item 19)