

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 26, 2001

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. The invocation was given by Tom Quillen, Associate Pastor, First Baptist Church of Melbourne.
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
	Cheryl Palmer	Vice Mayor, District 5
	Richard Contreras	Council Member, District 1
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Loretta Isenberg-Hand	Council Member, District 6
	Henry J. Hill	City Manager
	Paul R. Gougelman	City Attorney
	Cathleen A. Wysor	City Clerk
	Bud Emerson	Assistant City Manager
	Peggy Braz	Planning and Zoning Administrator

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented a proclamation recognizing “Florida Confederate History Month”, April 2001, to Wesley Frank, Sons of Confederate Soldiers.

Additionally, the Mayor presented the February 2001 Beautification Award to Mr. David McKay, GE Harris Harmon Railway.

5. APPROVAL OF MINUTES - March 13, 2001 regular meeting

Moved by Walker/E. Palmer for approval.

Mayor Buckley stated that regarding Item 10, page 4, he had disclosed that he spoke to Mr. Kiser, not Susan Kiser.

The question was called on the motion (including the correction). Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mr. Hill reported that the city has been selected as a winner of the Florida City and County Management Association “2001 Innovation in Communication and Technology” Award for our GeoNotify/Communicator Dialogic System (reverse 9-1-1 system). The Melbourne Police Department, in partnership with Brevard County Emergency Management, has the

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ability to record messages to specified homes, businesses, etc.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2001-12 (CU-2001-01): (Public Hearing/Second Reading) A proposed ordinance for a conditional use for a personal service establishment (Nail Hut) in an R-P (Residential Professional) zoning district, located at 2133 Sarno Road, Bowe Gardens Subdivision, Section M-1, on the south side of Sarno Road west of Croton Road. (Owner, applicant, and representative: William F. Kurz, Teresa Lynn Kinney, and Frank Kinney) (First Reading 3/13/2001)

Attorney Gougelman read Ordinance No. 2001-12 by title. Mr. Hill referenced the Code Enforcement case regarding the fence. There has been some progress; however, there are still violations. The compliance date has been extended to April 2. Regardless, the item is scheduled on the Code Enforcement Board's April 5 agenda. If the fence is not in compliance by that date, the Code Board will be in a position to take action.

Mayor Buckley opened the public hearing.

Frank Kinney, representing the applicant, reported that the surveyor found that portions of the fence were not on the Kurz property. He noted that as of today, the surveyor has indicated that the fence is located on the Kurz property and no longer encroaches. Mr. Kinney added that the property owners are making a good faith effort to comply and address the issues. He asked Council to separate the fence issue from the conditional use request and approve the request.

Mr. Palmer disclosed that Mr. Thompson (adjacent property owner) called him and said no action has been taken on the fence. Mr. Palmer added that apparently Mr. Thompson phoned prior to the work being done.

Moved by Buckley/Contreras for approval of Ordinance No. 2001-12.

Mayor Buckley agreed that the fence issue is separate from the conditional use request. Mrs. Palmer said it sounds as if they are progressing in bringing the fence up to Code; therefore, she will vote for the item. Mr. Palmer pointed out that the fence is a requirement for the business; therefore, it is tied to the conditional use.

The question was called. The roll call vote was:

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

Nay: None

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Motion carried unanimously.

9. ORDINANCE NO. 2001-16 (CU-2001-02): (Public Hearing/Second Reading) A proposed ordinance for a conditional use for a building height of 48 feet for a second building on a 2.98-acre parcel in the C-2 (General Commercial) zoning district, located on the south side of Hibiscus Boulevard east of Gateway Drive. (Owner, applicant, and representative: Granite Properties, Michael Lawley, and David Menzel) (First Reading 3/13/2001)

Mayor Buckley referenced the memorandum distributed from the City Manager indicating that this development is in compliance with the Development of Regional Impact. Questions were raised at the last meeting regarding the build-out date for this parcel.

Mr. Gougelman read Ordinance No. 2001-16 by title. There were no comments from the audience.

Moved by Hand/C. Palmer for approval of Ordinance No. 2001-16. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2001-17 (CU-2001-04): (Public Hearing/Second Reading) A proposed ordinance for a conditional use for the expansion of accessory church uses (counseling center and children's playground) on five platted lots in the R-2 (cap 6) (One-, Two-, and Multiple-Family Residential District with a cap of six units per acre), located at the northwest and northeast corners of Strawbridge Avenue and Platt Street. (Owner, applicant, and representative: United Methodist Church, Mark Rice, and Chandler Welch) (First Reading 3/13/2001)

The attorney read Ordinance No. 2001-17 by title. There were no comments from the public.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2001-17. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

11. COUNCIL ACTION RE: Consent Agenda

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Moved by Hand/Contreras for approval of the consent agenda as recommended. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Resolution No. 1684: A resolution requested by Cypress Square, Inc. authorizing a cross-easement agreement for portions of property located adjacent to Eau Gallie Boulevard, Cypress Avenue and Jasmine Street.
  - b. Payment for licenses and maintenance of Novell software, Novell, Provo, Utah - \$31,181.38.
  - c. Contract for diesel engine generator service, TAW Power Systems, Orlando, Florida - \$34,514.59.
  - d. Annual contract for approximately 300,000 feet of six-inch pavement striping (10¢ per foot), Fausnight Stripe & Line, Winter Springs, Florida - \$30,000.00.
  - e. Change Order No. 1 to contract for water main replacement in Bowe Gardens, Riverview Estates, Vista Grande, Grandview Shores and Ixora Park, Luchetti Construction, Inc., Melbourne, Florida - \$8,378.00.
  - f. Supplement No. 65 to Continuing Consultant Contract for Engineering Study for the Babcock Street Realignment, Frazier Engineering, Inc., Melbourne, Florida – 23,400.00.
12. COUNCIL ACTION RE: Consideration of additional work to analyze options for City Hall renovation/relocation.

Mr. Hill reviewed the agenda report. Architect Herb Sands had performed an evaluation and feasibility study on the needs of a new City Hall. This included an analysis of projected space requirements, an evaluation of several alternative sites, and development of cost estimates. Mr. Sands evaluated four sites: the present City Hall location, Auditorium site, North Babcock commercial site, and Babcock Police Communications Annex site.

At a special Council meeting last year, Mr. Sands made a presentation of his findings. Following discussion of the alternatives, Council's motion was that Mr. Sands should proceed with developing a layout to construct/expand the City Hall location, to develop a layout for Wells Park, and to provide an evaluation of the North Babcock Street site where the courthouse was proposed. In the interim, the city purchased the North Babcock property, former site of the Palms 8 Theater.

The proposal provides for the consultant to develop layouts for three alternatives: construct/expand at the present City Hall site, construct at the Auditorium site, and construct a new building at the Auditorium site for some services while retaining some services at the present Downtown location. The consultant will provide site plan layouts

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for each alternative and a revised report with updated cost estimates. Part of this would be an analysis of parking facilities and consideration of an Auditorium/City Hall combination. The consultant will also make a presentation of his report to Council. As included in the package, the proposal does not include work on the North Babcock site since the direction has moved to commercial site development. Should Council wish to proceed with the further consideration of the sites as proposed, a supplement to the Continuing Consultant Contract is included.

The proposed cost is \$14,900 and the time for completion is 30 days. Should Council desire to have a similar evaluation of the North Babcock Street site, the cost would be \$5,000 more. If Council approves the supplement to the Consulting Contract, an additional approval to provide funding for the work is necessary. The source of funds would be a transfer from the General Fund Miscellaneous Projects.

Mr. Contreras stated that the Babcock Street property should be deleted from further study. Mrs. Hand disagreed and said it is only an additional \$5,000 to include this site. Mrs. Poole disagreed and pointed out that the Babcock property needs to be sold and developed so the city can recuperate its funds. Mayor Buckley agreed with Mrs. Hand and said this would be a viable use of the Babcock property. He supports spending the additional funds so that a good comparison of all locations can be provided. Mr. Palmer said he supports inclusion of the Babcock site. Further, he noted that every option should be explored to its fullest.

Moved by Hand/E. Palmer for the consultant to develop layouts for the following: construct/expand at the present City Hall site; construct at the Auditorium site; construct a new building at the Auditorium site for some services while retaining some services at the present Downtown location; and to expend an additional \$5,000 to include the North Babcock Street property (former site of the Palms Theater).

Mrs. Poole stated that we need to consider keeping City Hall in the heart of Melbourne. She noted that there are ways on the current site to provide more parking.

Mayor Buckley agreed that Mr. Sands should investigate different ways to provide parking on the current site. He added that he does not believe the Downtown location is the heart of Melbourne. He pointed out that since Melbourne consists of the old City of Melbourne and the former City of Eau Gallie, the middle is probably in the vicinity of the North Babcock Street property.

The question was called. Motion carried. (Mr. Contreras voted nay.)

Moved by Hand/E. Palmer to approve the cost of \$14,900, plus the additional \$5,000 for the North Babcock Street site, with a transfer from the General Fund Miscellaneous Projects. Motion carried. (Mr. Contreras voted nay.)

13. COUNCIL ACTION RE: A request by the South Brevard Chapter of the National Association for the Advancement of Colored People (NAACP) for waiver of Grant Street Community Center rental fees to conduct the 10<sup>th</sup> Annual Senior Citizens and Presidential

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Banquet.

Mr. Hill briefed Council. The Brevard County Chapter of the NAACP has asked the city to waive the rental fees for the Grant Street Community Center for the 10<sup>th</sup> Annual Senior Citizens and Presidential Banquet scheduled for May 27. The event is free to anyone 65 years of age or older. The NAACP says that while it will receive some donations of food and supplies, the event is not a fund raiser. It is intended as a means of showing appreciation to senior members of the community.

The cost for use of the gym would be \$344.50 (resident rate). The event would probably require the gym to be closed to the public in the afternoon to set up for the event.

Mrs. Poole referenced the letter of request in the package from Clara P. Smith, President, South Brevard Branch, NAACP. Ms. Smith indicates that the banquet will also be used as a forum for the president to address the community. Additionally, waiver of the fee would assist the NAACP financially in its fight for justice and quality for all.

Continuing, Mrs. Poole said the NAACP is a political action group and if the fees are waived for this event, she asked where we draw the line on other groups that request fees be waived because they invite senior citizens. Fees are charged to defray the expenses for set up and clean up of events. Additionally, the gym, which is used by young people, will have to be closed for this event. It will establish a precedent and cause problems for staff and Council. Mrs. Poole stressed that this is nothing personal; however, fees need to be enforced fairly at all city facilities.

Mr. Palmer asked if the NAACP has paid the fees over the past nine years. Mr. Hill said he is not sure if the event has been held at city facilities all nine years; however, in the past, they have paid the fees. Mr. Palmer asked the difference between the past events and this event. Mr. Hill said they thought they would offer the opportunity for the city to co-sponsor the event.

Mrs. Palmer said she is a member and supporter of several non profit organizations in the community. She noted that organizations she belongs to would feel it was within their right to make the same request to Council. She agreed with Mrs. Poole that we need to be fair to all groups.

Mrs. Hand asked if we have waived the fees for other groups. Mr. Hill said years ago the City Council adopted a resolution providing for the fees for recreation facilities. That policy allows the city to co-sponsor an event when it is recreation oriented; however, the event requested is not a recreation type event and it does not fall under the policy as adopted.

Moved by Poole/E. Palmer to deny the request for waiver of the fees for this event so that a precedent is not established.

Mr. Palmer said he has mixed emotions. It is appealing since the event is free for senior citizens but at the same time it is a presidential banquet. If we did not impose the fee, we

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would be showing partiality and every organization in the city would desire to have waivers granted. He concluded by saying the fees are in order for this event.

Mr. Contreras said he also belongs to non profit organizations and waiver of this event would provide an opportunity for other organizations to approach the city and request the waiver of fees.

Mrs. Hand asked if Council would consider a cost reduction. Mayor Buckley said he is not familiar with reductions for similar events being granted in the past. Mrs. Palmer added that if Council Members feel good about the activity, they should provide their personal support rather than granting a waiver for fees.

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

14. COUNCIL ACTION RE: A petition from downtown Melbourne merchants requesting changes to the spring Art Festival. (Requested by Mr. Bill Morris)

Several Downtown merchants signed and submitted a petition protesting the manner in which the spring Art Festival is set up and conducted. They believe the artists' tents obstruct access to businesses and create safety hazards to the public by obstructing the sidewalks.

The petitioners have asked that the tents be placed in the middle of the streets (similar to the Fall Arts and Crafts Festival). The organizers of the Art Festival said they solicited for artists based on the tents being set up along the sidewalk area. Placement of the tents in the middle of the streets would greatly reduce the number of artists that could participate in the event. Additionally, this configuration would obstruct the Flamingo Fling Parade held in the evening.

In May 2000 the City Clerk conducted a 2000 Art Festival follow-up meeting with 12-15 Downtown merchants, staff, and Art Festival Committee members. At that meeting, several of the merchants requested the 2001 Art Festival be configured with the tents in the middle of the streets. The Art Festival representatives indicated at that time that they already had enough artists signed up for this year's event to preclude that set-up. However, representatives agreed to space the tents in the following manner: Two tents, four foot space, two tents, four foot space, etc. This would allow for better pedestrian traffic and access to the sidewalk area and businesses.

Additionally, this year a Code Enforcement Officer will monitor the Art Festival during regular business hours to ensure that the artists do not block the required clear space or the sidewalk area. The President of the Downtown Melbourne Association indicated that he would encourage the merchants to provide 8 ½" x 11" directional signs that can be placed on/near the artist tents and canopies directing the public to the open businesses.

Although businesses may not experience a high volume of sales during the Art Festival weekend, many have indicated that new customers return to the area the following week to shop. The event provides good exposure for the Downtown Redevelopment Area.

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Bill Morris, Heart Strings, 802 East New Haven Avenue, stated that the tents are placed in front of the businesses. He noted that this financially hurts the merchants and many merchants would like to see the tents placed in the middle of the streets.

Mr. Contreras asked Mr. Morris if he has talked with representatives from the Art Festival regarding this. Mr. Morris said yes, for the past couple of years. Additionally, the previous owner of his business also expressed her concern.

Michael Melhado, President, Downtown Melbourne Association, informed Council that the issue of tent placement has been a highly debated topic for many years. In the past, the Art Festival and the DMA have failed to agree on a solution; however, he stressed that the newly elected DMA Board has committed itself to remedying the situation.

Continuing, Mr. Melhado discussed the pre-planning meetings for the Art Festival and agreed that it is too late to change the set up of this year's show. He added that he believes very few merchants would support losing the festival altogether. Additionally, he pointed out that 90% of the signers of the petition are not DMA members. Those merchants have not been working with DMA to make positive changes in Downtown Melbourne; however, DMA feels with the help of these merchants a change, rather than confrontation, can be accomplished. He added that the Art Festival is really a marriage between a great location and a great festival.

In response to Mrs. Poole, Mr. Melhado agreed that there has been apathy and lack of leadership over the past few years with the DMA.

Mrs. Walker asked if the Art Festival brings in revenue. Mr. Melhado said that although he does not have a formal study, he is sure it does. There are many merchants who would agree that this is an important event.

Following a brief discussion, Mrs. Palmer recommended that the merchants be made aware of the changes that will be made for the 2001 event (as outlined in the agenda report).

Bill Wade, Finders Keepers, explained that last year he did the leg work for the petition. He noted that the former DMA President expressed that the petition had to be done outside of the DMA because she was concerned about repercussions. Mr. Wade added that he was a DMA member; however, he chose not to join this year. The group seems to segment the restaurants from the shops and he doesn't believe the DMA represents the shops.

Continuing, Mr. Wade discussed the hardship by having the front of his store blocked during the Art Festival. Also, it is his opinion that the Art Festival crowd is not the type that he normally does business with. They are more interested in drinking. Mr. Wade concluded by asking that the set up be moved to the center of the streets.

A brief discussion followed regarding the recent St. Patrick's Day event in Downtown Melbourne. In response to Mr. Contreras, Mr. Wade said he is not opposed to anything that goes on after business hours. Responding to Mr. Palmer, Mr. Wade said he is not asking the Art Festival to go away, he is asking that they consider and help the businesses.

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Mrs. Walker asked the number of DMA members and Mr. Melhado replied currently there are 60.

Cindy Todd, The Baby Patch, 800 East New Haven Avenue, stated that she is a past president of the DMA. She reported that in the past the DMA worked with the Art Festival; however, during that time, the Art Festival members were an arrogant group. Through the former Downtown Progress Association, which is now the DMA, she tried to discuss with the Art Festival the difficulty experienced by the merchants when the tents are placed along the sidewalks. The artists place their materials behind the tents on the sidewalks and the public is not able to gain access. She stressed that the merchants are here 365 days a year. The Fall Art and Craft Festival places the tents in the center of the streets and the merchants enjoy that. She said she finds it hard to believe that the Spring Festival cannot make the change.

Kathy Harned, Blossom House, 1003 East New Haven Avenue, stated that she has had trouble with the Art Festival since its inception. Last year's event was held on Easter weekend and it was extremely difficult for her to make her deliveries. Some years, she has had no access and in her opinion, the festival should be moved out of the Downtown area.

Jan Duff, President, Melbourne Art Festival Committee, stated that the Art Festival is a wonderful, cultural event. The festival is not in the business of making money, it is in the business of promoting one of the largest cultural events in our county. The Spring Art Festival is in the top 2% of shows nationwide.

Continuing, Ms. Duff discussed the follow up meeting held after last year's event and said that although they are not able to address every concern, they have arrived at some helpful conclusions to meet the merchants in the middle. Artists are usually pre-registered for the next year by the third week of April. She outlined the changes that will be made during the 2001 event and added that the merchants have been invited to help set up on Friday evening to ensure compliance. Ms. Duff said the Art Festival Committee is a volunteer organization so there is a lack of continuity. However, the current board has never refused to talk with the merchants; they are willing to discuss all options.

Ms. Duff explained that the Spring Festival is three times the size of the Fall Festival. If the tents are moved to the center of the streets, they would have to expand three blocks west into the residential section. They have discussed options from relocation to disbanding altogether. But, the members want it Downtown. People love the historic Downtown area. The event is a fine art show that brings 60,000 people into town over the weekend. Although it is too late to make the change this year, her hope is that all parties involved will compromise and reach a solution acceptable to all.

Mrs. Poole pointed out that the main reason the tents cannot be in the middle of the street is because of the Flamingo Fling Parade. It is a great parade that attracts many people. She agreed that the Art Fest Committee has had many members, however, so has the DMA. She noted that it would be a disaster to lose the parade and since this event only occurs once a year, she believes things can be worked out.

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Mr. Contreras suggested that the reconfiguration include consideration of use of the riverfront area, including Front Street. Also, he recommended that the committee consider the use of Strawbridge Avenue for the parade. Mr. Contreras asked if it is safe to say that pre-registration has not occurred for 2002. Ms. Duff replied that is correct.

Mrs. Palmer said for years she has heard the merchants complain and she feels their complaints are not being heard. It is her understanding that the whole reason for the festival is to support/promote business in the Downtown area; however, the very people they are seeking to promote feel their business is being hurt. Therefore, the purpose is being defeated. Mrs. Palmer added that the merchants didn't come to the Art Fest last May with this request – they have come year after year. However, each time they have been told that the artists have already been lined up. She concluded by saying this needs to be resolved prior to the cut off date for pre-registration.

John Gordon, Red Lion Antiques, 807 East New Haven Avenue, said for the past five years he has been told that the Art Festival is going to leave space between tents for access to the sidewalks; however, the artists place their belongings on the sidewalk and it interferes with customers trying to enter his store. He said he likes the Art Festival in the Downtown area; however, the merchants are not being heard.

Tina Suiter, Vice President, Melbourne Art Festival, and President of the Fall Art and Craft Festival, discussed the mission of the two events. The goal of the Spring Festival is to organize and present an annual art festival and to further promote artistic endeavors and education in Brevard County. Nowhere in that statement is there anything about promoting business in Downtown Melbourne. It is a blessing for the Downtown area that the festival landed here.

The Fall Festival was started by the DMA as a fund raiser. Two very distinct purposes. The Melbourne Art Festival is a non-profit organization that "hangs on" from year to year. The Fall Festival is a money making venture. Additionally, the Spring show draws about 60,000, which some have said is a conservative estimate, and has 250 artists. The Fall show now draws about 10,000, with 150 artists.

Regarding set up of the event, the two tents, four feet set up looks good on paper; however, it doesn't always hold true. If one artist is off by five inches in the set up, it affects the entire layout of the event.

Ms. Suiter continued discussing the set up of both events and stressed that layout is the key to a successful event. One year artists booths were placed in the yard of the Henegar Center. Participants tend to follow a pattern and not break out from that pattern (to the Henegar Center lawn or the Front Street area). She said it would be beautiful to set up the Spring show in the middle; however, she does not think it would be possible with an attendance of 60,000.

Continuing, she noted that she is negotiating \$50,000 in advertising for the Spring show. The Art Festival wields power with the media. The advertisement dollars go into advertising

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Downtown Melbourne. The event places the Downtown area on the map. People attend from out of state every year. She said the Downtown area is beautiful and she hopes the event can remain in this location.

Mrs. Palmer asked about volunteers from the business community helping with set up of the event. Ms. Suiter said yes, if they attend a training session. She added that it would not be good for a merchant who doesn't want the Spring event to help with set up.

Mrs. Palmer asked what will happen when 100 more artists are added to the Spring event. Ms. Suiter said it will remain at 250. That is a good size show and they would not be able to handle additional artists. Mrs. Palmer asked if they have considered use of Wells Park. Ms. Suiter replied anything is possible.

Mrs. Palmer said she hopes the meeting between the two parties will be productive. The Art Festival is a wonderful thing for many people; however, the people who have invested their time, money, and resources in Downtown shops need consideration.

A brief discussion followed regarding the set up of the event and possible solutions. Mayor Buckley noted that both sides have agreed to cooperate and work towards resolving the issue. The City Clerk confirmed that a meeting has been scheduled with all parties to discuss set up of the 2002 event. A report will be returned to Council.

Recessed: 9:20 p.m.

Reconvened: 9:34 p.m.

15. SITE PLAN APPROVAL (SP-2001-01): (Public Hearing) This is a request for site plan approval on an approximate 11.381-acre lot and tract of the North Drive Industrial Plaza Subdivision, located on the west side of North Drive approximately ¼ mile south of Sarno Road. (Owner, applicant, and representative: Henderson North Drive LLC, Robert C. Stuhlmiller, and Vaheed B. Teimouri) (P&Z 3/15/2001)

Mrs. Braz briefed Council. The property was originally part of the Plaza North Subdivision but was later re-platted in 1997 as North Drive Industrial Plaza. The 11.4 acres consist of all of Lot 25, Block B, and the southeastern portion of Tract A, Block B. The property has an adopted future land use designation of Industrial and is zoned M-1 (Light Industrial). All adjacent properties have the same land use and zoning and are currently vacant with the exception of a portion of the Dictaphone parking lot located north of the site.

The proposed two-phase plan of development consists of two 50,050 s.f. mixed-use office and warehouses with high dock bays. The second phase site will be prepared following development of the first phase building construction. Approximately one-half of the floor area of the buildings will be used for offices and one-half for warehouse uses. A total of 278 parking spaces is proposed. Two driveway access points will be provided with sufficient width to accommodate semi-trucks. A sidewalk will be constructed along the street frontage. Other developments along this street have paid into the sidewalk trust fund or executed sidewalk assessment agreements. These funds and agreements will be

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enacted to provide for a continuous sidewalk along North Drive. A stormwater retention area will be provided on the easterly portion of the property with outfall into the closed drainage system within North Drive.

The Environmental Impact Assessment Report reveals that the site is covered with a thick canopy of palmetto, gallberry, and longleaf pine. The site will be substantially filled so it is highly unlikely that trees can be saved. The report indicates that one active gopher tortoise burrow is present in the area. One burrow is located in the south central portion of the property. Another burrow is located just south of the property boundary. Florida Game and Freshwater Fish Commission permits will be required to relocate or take these tortoises.

The Planning and Zoning Board and staff recommended approval of SP-2001-01, site plan for North Drive Buildings prepared by Vaheed B. Teimouri of Teimouri and Associates of Melbourne, Florida, consisting of a one-sheet plan with Project No. 2001-101, dated 1/23/2001 and with a revision date of 3/2/2001, with the findings listed in the agenda package and the following stipulations:

- a. A change to the site plan will require reevaluation of the site plan by the City Engineering Department and the Planning and Zoning Department. Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to a decrease by five percent in the amount of open space or vegetative areas on site or an increase by more than five percent in the size of the buildings as part of this plan approval. The second phase shall not be cleared and filled until the applicant applies for building permit for the second building.
- b. The owner/applicant shall obtain permits from the Florida Game and Freshwater Fish Commission to relocate gopher tortoises found on the property. If other endangered or threatened species are found on the property prior to or during construction, the applicant shall cease construction activity until appropriate permits are obtained by the appropriate jurisdictional agency.

The applicant was not present. There were no comments from the audience.

In response to Mrs. Poole, Mrs. Braz said some of the trees around the fringes may be able to be saved; however, that is why the stipulation has been added about the second phase. The landscaping on the site will have to meet Code.

Responding to Mrs. Hand, Mrs. Braz said that it is possible for the trucks to use Sarno Road and travel east; however, the location was selected in order to take advantage of I-95.

Moved by E. Palmer/Contreras for approval of SP 2001-01 subject to the proposed stipulations. Motion carried unanimously.

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16. RESOLUTION NO. 1685 (ADMINISTRATIVE COMPREHENSIVE PLAN AMENDMENT/CPA-2001-01AD (A & B): (Public Hearing) A proposed resolution to implement policy changes to the Future Land Use Element and Infrastructure Element Map. (Requested by City of Melbourne) (P&Z 3/1/2001)

The City Attorney read Resolution No. 1685 by title. Ms. Braz briefed Council. The proposed policy changes will: a) better define and provide greater flexibility for property owners to develop or redevelop their property as a single uniformly designed development project and to clarify density issues related to one or more contiguous properties under single ownership, and b) establish a principal of transfer of development rights which could be built into the land development regulations. Also proposed is an amendment to Map IS-3 to expand the future sewer service area in existing unincorporated areas northwest and west of the city to be consistent with the proposed Joint Planning Agreement.

There are several locations in the city that include contiguous properties, both developed and undeveloped, with a land use designation (and in some cases different zoning designations) that differ in regard to density permitted. For example, if a person owns a 10-acre parcel and one-half of the parcel has an established land use density of 15 units per acre and the other one-half has an established land use density of six units per acre, and the property owner wants to develop the parcel as a single project, then a total of 105 units would be permitted. One-half of the property would be permitted 30 units (six units per acre x five acres) and the other half would be permitted 75 units (15 units per acre x five acres).

To address this, two policies are proposed.

**The first proposed policy amendment** would clarify that the property owner could blend the densities to develop an average density on the combined or contiguous properties. In the example cited, the 10 acres could be developed at an average proportional density of 10.5 units per acre. The number of units permitted would still be limited to 105 units.

Some specific examples of where this may occur include the northeast corner of Lake Washington Road and Stewart Road, the southeast corner of Post Road and Croton Road, the Massarro Property (Wickham Road north of Pebble Creek Subdivision), the Courtelis property on Dairy and Eber Roads, and parcels at the northwest corner of Parkway and Wickham Roads.

A further example of the application is the 64-acre Courtelis property located at the northeast corner of Eber and Dairy Roads. This property has an established land use of Low Density Residential. Residential densities are limited to six units per acre. The owner intends to develop the easterly 42 acres at considerably less than six units per acre (3.9 UPA) and develop the westerly 22 acres at the balance of unused density (221 units). This would represent approximately 10 units per acre. This proposal will permit these transfers of density on these contiguous properties under single ownership and will not result in greater density on these properties than now permitted under the existing land use designation.

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We have a similar provision as part of the Zoning Code, Article XIV(1). However, this is mostly applied to residential lots abutting commercial properties. The city also has other provisions related to Transition Zoning (Article XIV), which is a form of transfer of development rights, except that in this case it would be limited to contiguous properties.

**The policy will read as follows:**

*PROPOSED AMENDMENT*  
*Future Land Use Element*

*Objective 1*

- f. *Permit residential development on one, two, or more contiguous properties with differing densities to develop with a blended density no greater than the sum of the two or more permitted densities in proportion to the land area. These provisions may be implemented in transfer of development rights provisions contained within the land development regulations.*

**The second proposed policy amendment** would establish a site specific policy related to density. In 1986, the City Council adopted a zoning ordinance permitting a 108-acre parcel located on the east side of Stewart Road between Parkway Drive and Lake Washington Road to be developed with different densities. The north 39.3 acres (Parcel A) was to be limited to 3.2 units per acre (125 units). This property was developed as Sweetwood Subdivision (124 units). The adjacent 21-acre portion (Parcel B) was permitted to be developed at six units per acre (126 units). This property and an additional .8 acres were developed as the Monaco Estates Subdivision (130 units). The third portion, consisting of 25 acres, (Parcel C) was to be limited to eight units per acre (200 units), and the most southerly portion (Parcel D) (22.41 acres) was to be limited to 13 units per acre (291 units). The ordinance also limited total average density to 6.89 units/acre for a total of 742 units permitted. Parcels C and D have not been developed but are partially under single ownership. (The Northside Presbyterian Church owns the southeast 6.71 acres of Parcel D.)

In 1988, the Comprehensive Plan was adopted, which established a Low Density Residential land use (maximum density of six units per acre) on the 108-acre property. Since this time, Parcels A and B have developed within the density restrictions of the Comprehensive Plan. Since the Comprehensive Plan has greater statutory authority than the Zoning Code, the policies (and in this case the map) control development density on this property. Policies, including site specific policies, in the plan have greater authority than the map. The proposed policy, if approved, would officially reestablish the intent of the ordinance.

Site Specific Policy:

Study Area I.

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2. Confine medium density multi-family development to the area lying west of the Florida East Coast Railway to the already approved developments in the out-parcels of the Harbor City Golf Course, along Lake Washington Road, and along the east side of Wickham Road from Caribbean Isles Boulevard to Parkway Drive and north of Forest Run Drive to a depth of approximately 600 feet. The residential properties on the north side of Lake Washington Road east of Stewart Road and south of Parkway Drive may be developed with an overall density of 6.89 units per acre. This includes the Sweetwood Subdivision, Monaco Estates Subdivision and Tax Parcels 03 and 769.

**The proposed map amendment** (Map IS-3) will expand the geographic area to be served by the City's D.B. Lee Wastewater Treatment Plant to areas farther west and northwest of the area currently identified in the Comprehensive Plan. The Sewer Element of the 1988 Comprehensive Plan contained this area and area farther to the north of the proposed expansion area but was curtailed because of an overlapping of the city's and the county's sewer service area. A proposed Joint Planning Agreement will further establish the boundary between the city and county future sewer service area. It may be that the city will never serve portions of this area since the city requires a pre-annexation agreement in order to provide sewer for those properties that are non-contiguous. There also must be a probability that they will become contiguous. Most of the subject area is developed as single-family homes on large lots (usually greater than one-acre lots). These homes now use septic tanks and are expected, for the most part, to continue using septic tanks.

The Planning and Zoning Board and staff recommended approval of CPA-2001-01AD (A & B), amending the Melbourne Comprehensive Plan, Future Land Use Element, with the findings outlined in the agenda package.

Regarding the map change, Mr. Palmer said it makes sense; the city is simply trying to mark out the area of influence for future growth in the city.

Regarding the policy change, Mr. Palmer asked what would stop one parcel from developing beyond its permitted density, while the adjacent parcel is sold.

Mrs. Braz said they would have to be planned and developed at the same time. Also, a document would be recorded in the Public Records indicating that the development is limited to an overall density. Attorney Gougelman agreed and said there would be a binding development plan that would run with the land.

Mrs. Poole expressed concern with changing a policy in order to be flexible for developers and provide for the removal of trees and vegetation in order to squeeze in more houses and buildings. She referenced the densities on the Courtelis property and asked what would happen if the 42 acres were developed at a higher density and the remaining 22 acres were sold and no longer under single ownership. The new owner of that property would expect and request the higher density. Mrs. Poole stressed that the

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different densities were established at different times for different reasons. The proposed change does nothing for the environment and quality of life.

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

Moved by Hand/Contreras for approval of Resolution No. 1685. Motion carried. (Mrs. Poole voted nay.)

17. COUNCIL ACTION RE: Discussion of additional homestead exemption for low income senior citizens.

From the agenda report. Late last year Council requested information about the additional homestead exemption for low income senior citizens. We were able to obtain data from the County Property Appraiser's office from which to estimate the impact on Melbourne if such an exemption is granted. Based on that information, the Finance Department estimates that 3,647 residents would be eligible for this additional homestead exemption.

The maximum exemption is \$25,000, so the reduction in taxable assessed valuation would be \$91,175,000. Such a reduction in the taxable assessed valuation would cause an increase in the millage rate of .1761 mills from 4.5228 mills to 4.6989 mills. This would equate to a 4% tax increase for other city taxpayers.

Cocoa, Satellite Beach, and Titusville have granted the full exemption. Brevard County has granted the exemption to be phased in over three years. Other jurisdictions are either considering the issue further, or have rejected the additional exemption. If Melbourne wishes to grant this additional property tax exemption, an ordinance must be adopted to implement it prior to December 1.

Mrs. Palmer asked if the additional exemption is based on the age of the property owners or income. Mr. Hill said both. He added that the figures outlined in the package would be the maximum. The actual may be a number less than that. That figure was used to estimate the maximum impact.

Responding to Mrs. Palmer, Mr. Hill said the county thought 70 – 100% of those would be eligible. The county asked that the statement of income (sent to the 3,647 residents) be returned by June 1.

Mr. Palmer said 4% is not realistic. He seriously doubts all would qualify. Mrs. Palmer recommended Council look at this after the June 1 deadline.

Mrs. Poole said she objects to the rest of the city paying up to a 4% increase in taxes in order to provide this exemption to one group. Asking the taxpayers to make up the difference is not right.

Mrs. Palmer replied that the city can't really determine the difference at this point.

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Mr. Palmer said phasing this in over a three-year period is a good idea. He asked if it would be possible to provide a lower (than \$25,000) exemption. Mr. Hill said the maximum amount is the additional \$25,000 exemption. The lesser amount is the basis for the county phasing in their exemption.

Moved by C. Palmer/Hand to postpone discussion on this item until after June 1 (the deadline established by the county for applications to be submitted) in order to determine the actual number of residents who qualify for the additional exemption. Motion carried unanimously.

18. RESOLUTION NO. 1686: A proposed resolution delegating authority for approval of certain types of documents to the City Manager.

Attorney Gougelman read resolution No. 1686 by title.

This resolution delegates authority to the City Manager to negotiate and execute certain documents and agreements. The City Attorney has advised that all agreements, contracts, releases and other written instruments must be approved by the City Council in accordance with Florida law unless authority has been specifically delegated.

Section 3.03(4) of the Melbourne City Charter delegates authority to the City Manager to execute documents. There are many documents that are truly routine in nature that the City Manager approves and executes on behalf of the city. These instruments include the city's form stormwater maintenance agreement and releases of satisfaction liens releasing liens imposed pursuant to the HOME, SHIP or CDBG and similar types of program.

Moved by Poole/E. Palmer for approval of Resolution No. 1686. Motion carried. (Mrs. Palmer voted nay.)

19. RESOLUTION NO. 1687: A proposed resolution authorizing the approval of a Lease Agreement with BellSouth Mobility, Inc., for lease of the Indialantic Water Tower for cellular telephone service in the amount of \$30,000.00.

Attorney Gougelman read Resolution No. 1687 by title.

From the agenda report: This is a resolution relating to approval of an option and lease agreement with BellSouth Mobility, Inc. to place cell phone antennae on the Indialantic water tower. The proposed lease is for a five-year period with four additional options of five years each. Initial rent is \$30,000 per year for placement of antennae subject to an annual increase equal to the increase in the consumer price index but no less than 3% or more than 10%. BellSouth will provide \$2,000,000 of liability insurance and pay any property taxes resulting from their use of the land. If the technology changes, they have the right to terminate the lease and pay a six-month penalty.

To our knowledge, no public landlord in Brevard County has been able to obtain such a favorable rental amount. Currently Nextel and AT&T have been negotiating with the city to place antennae on the Indialantic water tower. Nextel was willing to pay the city \$12,000

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per year and AT&T agreed to increase their offer to \$24,000 per year. Based on the approval of this lease with BellSouth, a new benchmark will have been established.

Mr. Hill summarized the correspondence distributed from the Indialantic Town Manager. He noted that Indialantic wanted to ensure that this action was compatible with the town's zoning requirements, etc. Mr. Hill added that he believes the lease covers the various concerns outlined by the town.

Attorney Gougelman referenced one change in the resolution – to reflect BellSouth as LLC (limited liability company) as opposed to Incorporated.

In response to Mrs. Hand, Attorney Gougelman said the antennae will be placed on the catwalk of the tower and will not extend any higher.

Moved by Poole/E. Palmer for approval of Resolution No. 1687 as amended.

Mr. Palmer discussed the negotiations with Nextel and AT&T.

The question was called. Motion carried unanimously.

Moved by E. Palmer/Poole to provide that future similar leases will have an annual base amount (minimum) of \$30,000. Motion carried unanimously.

20. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Hill referenced the correspondence distributed between the City Attorney and the Airport Authority Attorney regarding the geographic boundaries of the Melbourne International Airport. By consensus, Council agreed that the City Attorney should review the issue of the city paying the Airport Authority for property leased by the city and owned by the city.

Mr. Hill noted that the city previously agreed to drop its lawsuit against HCVAS if the sale of the property on Hickory Street (for approximately \$600,000) went through and the city received \$300,000 from that sale. He noted that the purchase fell through; however, HCVAS has received an offer from another entity, apparently the hospital, for much less; however, the offer of \$300,000 is still being made to the city. They are looking to close the deal in the next week or so. He asked if Council was still willing to accept the same deal of \$300,000 in return for the city dropping its lawsuit.

Mrs. Poole disagreed with the offer and noted her previous concerns about settling with HCVAS when the property should revert to the city. Mr. Hill said fundamentally, the settlement has not changed.

A brief discussion followed.

Moved by Walker/C. Palmer to accept the \$300,000, regardless of the identity of the purchaser.

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Mrs. Poole said the hospital wants the property because they don't have adequate parking, etc. She is opposed to switching in mid stream.

Attorney Gougelman said it is a business decision. He added that he believes our chances of prevailing in the lawsuit are good. There is no right/wrong decision; it is simply a business decision.

Mrs. Palmer asked the chances of the city realizing \$300,000 for the sale of that property. Attorney Gougelman said Council has to consider that there is a willing buyer now. At this point, probably \$10,000 - \$15,000 has been spent for attorneys' fees. Assuming an appeal after trial, we can expect around \$40,000 - \$50,000 in attorney's fees.

Mr. Hill said we are talking about \$300,000 for one acre of land – that is all the city has an interest in. He added that it seems worth considering.

Mrs. Poole stressed that the hospital needs all the property they can get; therefore, we could probably get a higher price if we were willing to wait.

Mrs. Hand declared a conflict of interest because she is employed by Holmes Regional Medical Center and the hospital may be the purchaser.

The question was called. Motion carried. (Mrs. Poole voted nay and Mrs. Hand abstained from voting.)

21. ADJOURNMENT

Moved by Walker/E. Palmer to adjourn. Motion carried unanimously.

The meeting adjourned at 10:40 p.m.

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City Clerk – 4/6/2001

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

Attachment to official minutes: Memorandum of Voting Conflict Form for Mrs. Hand (reference Item 20)