

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
APRIL 24, 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 7:31 p.m. by Mayor John A. Buckley.

1. The invocation was given by Reverend Bruno Malara.
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 reported that the city received a certificate from the Interfaith Alliance for participating in a “Week of Civility.”

The Mayor read and presented the following proclamations:

“Beta Sigma Phi Day”, April 30, 2001; accepted by Linda Paiva, President, South Brevard City Council of Beta Sigma Phi.

“Teacher Appreciation Week”, May 6-12, and “National Teacher Day”, May 8; accepted by Karen Schafer, Assistant Principal, Eau Gallie High School.

“National Police Week”, May 13-19, and “Peace Officers’ Memorial Day”, May 15; accepted by Melbourne Police Chief Keith Chandler.

“Ellen Miller Day”, May 8, 2001; accepted by Ellen Miller, Teacher, Eau Gallie High School.

Additionally, Mayor Buckley announced that the National Arbor Day Foundation and the State of Florida, Division of Forestry has named the City of Melbourne as a Tree City USA for the 13th year. Leisure Services Director Mary Ann Kise accepted the “Tree City USA” flag on behalf of her department. She credited the Parks Division employees for their outstanding work and dedication.

Mayor Buckley also announced that the Brevard Public Schools recognized the City of

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Melbourne as a School Business Partner 2001 for providing a mentoring program to University Park Elementary School. The certificates were accepted by Peggy Braz who coordinated the mentoring effort for the city.

5. APPROVAL OF MINUTES - April 10, 2001 regular meeting

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

6. CITY MANAGER'S REPORT

Mr. Hill reminded Council that Joe Wickham was nominated for and received the 2000 Great Floridian Award. The plaque designating this honor will be unveiled at the Eau Gallie Civic Center on May 2 at 7:00 p.m.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2001-18: (Public Hearing/Second Reading) A proposed ordinance establishing an application process and guidelines for review of the application for ad valorem tax exemption. (First Reading 4/10/2001)

Attorney Gougelman read Ordinance No. 2001-18 by title. There were no comments from the audience.

Moved by Contreras/Hand for approval of Ordinance No. 2001-18.

Mrs. Poole said she is opposed and added that she is not sure the citizens knew what they were voting for. The information provided to Council indicates that this program would create jobs and not disadvantage existing businesses. Additionally, points would be tripled for location in a redevelopment district. She stressed that businesses in the Downtown Melbourne area have struggled to succeed and thrive without tax abatement. This program could attract their employees thereby causing existing businesses to collapse. She concluded by saying we are encouraging more growth with tax abatement.

Mrs. Palmer said the statistics provided by the Economic Development Commission show that there would be even more revenue coming in when tax abatements are granted (because of the additional franchise fees, etc.). The purpose of the program is not to encourage more residents to move in but to provide job opportunities for Melbourne residents.

The question was called. The roll call vote was:

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

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Nay: Poole

Motion carried.

9. COUNCIL ACTION RE: (Public Hearing) A request for consideration of a Joint Planning Agreement between the City of Melbourne and Brevard County to implement portions of the Comprehensive Plan Intergovernmental Coordination Element. (Postponed by Council 4/10/2001)

Mrs. Braz briefed Council. The city and county staffs have been working on a Joint Planning Agreement (JPA) for more than a year. This JPA will implement portions of the Comprehensive Plan and specifically the Intergovernmental Coordination Element. Such agreements are desirable to ensure that local governments are not duplicating urban services or competing for development in a way that does not provide efficiency of services.

As proposed, the JPA will establish a formal procedure for sharing development information in particular areas (delineated on the map in the agenda package) that are of interest to both the county and the city. This information would include comments from city/county staff on development proposals (Comprehensive Plan amendments, rezonings, conditional uses, site plans, subdivision proposals, public utility improvements, etc.) and reporting these comments to applicants and/or to decision-making bodies. The county will become another review agency of proposed plans in parts of the city. Likewise the city will review development proposals occurring in portions of the county close to the city. Usually these comments will be advisory in nature and not binding unless the proposal will violate a provision of either jurisdiction's Comprehensive Plan.

The JPA also establishes a specific boundary for the extension of urban services including sanitary sewer. The city transmitted to the Department of Community Affairs a Comprehensive Plan amendment to modify the sewer service area map to be consistent with the proposed agreement. This map was modified in 1998 as part of the Comprehensive Plan revision process reducing the size of the future sewer service area. This will prevent the county from further extending county sewer lines in proximity to the city (except beachside). The city and county now have overlapping sewer service lines in the Post/Wickham Road area.

The JPA also will require that owners developing in the JPA area, not contiguous to the city, and desiring to connect to the city sewer to enter into a pre-annexation agreement and may be required to develop to city land development regulations.

Lastly, the agreement will establish a formal procedure for the transfer of a county road to the city upon the annexation of a majority of the street frontage of properties abutting a particular street. Collector and arterial roadways within the JPA would be exempt from this provision.

The Planning and Zoning Board found the agreement consistent with the Comprehensive Plan. The Board indicated some concern with the requirement to develop to city standards

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with a pre-annexation agreement and asked that the City Attorney review this. A rather extensive review with staff and the attorneys resulted in the modifications of this section of the agreement. Any city development requirements will be included in the pre-annexation agreement. Traditionally, we have required various development requirements with a pre-annexation agreement.

The Planning and Zoning Board and staff recommended approval of the proposed Joint Planning Agreement between the City of Melbourne and Brevard County, prepared/dated April 7, 2001, and finds the proposed agreement consistent with the Melbourne Comprehensive Plan (FOC-2001-03) along with the findings contained in the Preamble of the Agreement.

Mr. Hill stated that this agreement is the result of a tremendous effort by the Planning and Zoning staff and the City Attorney. He noted that the next step is for the County Commission to accept and adopt the agreement. Attorney Gougelman commended Peggy Braz for her effort and pointed out that this type of agreement was first suggested to the county 13 years ago.

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

Moved by Poole/E. Palmer for approval of the Joint Planning Agreement between the City of Melbourne and Brevard County. Motion carried unanimously.

10. COUNCIL ACTION RE: A request by the Downtown Redevelopment Committee for city sponsorship of the monthly "Friday Fest" in Downtown Melbourne. (Postponed by Council 3/13/2001)

From the agenda report: Council received a request from the Downtown Redevelopment Committee for the city to support the Friday Fest event held monthly in Downtown Melbourne. At the March 13 meeting, Council postponed discussion of the request until the Downtown Redevelopment Committee clarifies whether it supports the funds being taken from the Downtown Redevelopment Trust Fund. At its April 5 meeting, the Redevelopment Committee voted unanimously to recommend that "city staff costs, including barricades, police presence, etc., for the Friday Fest be waived and not taken from Downtown Funds, but be absorbed by the city."

This is a community event that has been held for approximately two years. Profits from the event are utilized by the Downtown Melbourne Association (DMA) for marketing of the downtown area. These services have averaged \$400 per month in the past. The cost would be approximately \$4,500 – \$5,000 per year. As requested, these costs would have to be absorbed by the General Fund departments providing the service.

Mrs. Poole said she has a problem with the request. This could lead to other events and organizations making the same request. The proceeds from the Friday Fest are used for marketing, which is great; however, she believes it is the DMA's responsibility to market the area. She concluded by saying if the event were held once a year, she would be able to consider the request.

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Mr. Contreras said he supports the Friday Fest event. He added that it is a community event that draws families, students, and businesspeople that want to enjoy the renovated Downtown Melbourne area. He stated that he could support providing the services this year.

Mrs. Palmer agreed that the city should support the event by providing services. She pointed out that some of the events in the Downtown Area are viewed as being detrimental to businesses; however, the Friday Fest activity has not met with any complaints and is seen as beneficial to the merchants.

Mayor Buckley said he also supports the event and recommended that the costs (\$4,500 - \$5,000 per year) be split between the Downtown Redevelopment Trust Fund and the General Fund.

Mrs. Poole clarified that this event has received complaints. She lives in the area and knows about the noise problems, trash, etc. Groups leaving the Friday Fest gather around vehicles parked in the residential areas and drink.

Mr. Palmer agreed that the Friday Fest serves a good purpose. He recommended the city support the event on a trial basis. Since the expenditure will be approximately \$5,000 per year he would like to try it for six months.

Mrs. Hand agreed with providing support on a trial basis.

Scott Lillycrop, Special Events Committee Chairman, DMA, thanked Council for its support of the Friday Fest. He reviewed the costs related to the event and noted that the city charges for electric, barricades, and police protection. Mr. Lillycrop explained that recently the police costs doubled. The DMA recognizes that this is a growing event and feels that it should carry some of the burden. He requested the city provide \$2,280 per year for barricades and electric (\$190 per month). Also, if Council is agreeable, he recommended that the city support services for electric and barricades for the balance of this year, June through December. He added that if there is no event in December, the cost will come down.

Mrs. Poole asked how some of the revenues are used from the event. Mr. Lillycrop replied that they have donated several hundred dollars to the Melbourne Area Jaycees for the time and support that group has provided to the DMA.

A brief discussion followed regarding the set-up of the event and the cost for vendors to participate in the event.

Moved by Buckley/Walker for the city to provide services for electricity and barricades from July through December 2001 for the Friday Fest event up to a total of \$2,280. Motion carried unanimously.

NEW BUSINESS

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11. COUNCIL ACTION RE: Consent Agenda

Moved by Hand/Walker for approval of 11”a” through “k” as recommended.

Mr. Contreras discussed his concerns with item “f” and questioned if the costs could be split with the contractor. Following a brief discussion, Mr. Hill recommended the item be withdrawn so additional information could be provided.

In response to Mr. Palmer, Mr. Klaproth, Utilities Administrator, elaborated on item “k.”

Mrs. Palmer referenced “b” and noted that the boat was scheduled to be replaced in 2004-2005. She asked if the justification for replacement now is to take advantage of the grant money. She asked for additional information regarding the condition of the boat, its uses, etc.

Mr. Hill said replacement was advanced, in part, because of available funding. However, the boat is 12 years old and there are other issues. He added that the deadline for the grant application is May 1. Mrs. Palmer expressed concern with staff presenting an item, which allows no time for review. Mr. Hill recommended Council strike the boat if it feels the item is not justified. He assured Council that this item was not held in order to pressure Council with a deadline.

Following a brief discussion, Assistant Fire Chief Greg Anglin discussed the time involved in preparing the grant, the application process, and the deadline.

Mrs. Palmer’s motion to delete the fire boat from item “b” did not receive a second.

Moved by Contreras/E. Palmer to amend the motion by deferring item “f” until the next meeting. Motion carried unanimously.

The question was called on the main motion, as amended. Motion carried. (Mrs. Palmer voted nay.)

The consent agenda was approved as follows:

- a. Request from the Brevard Mosquito Control District for permission to spray from aircraft to combat the spread of St. Louis encephalitis.
- b. Resolution No. 1691: A proposed resolution to apply to the Assistance to Firefighters Grant Program of the Federal Emergency Management Agency (FEMA) for funding in the amount of \$221,165 for eight thermal imaging cameras and a replacement fire boat.
- c. Change Order No. 2 to contract for Pineapple Park Shoreline Restoration, Project No. 01115, Santa Cruz Construction, Merritt Island, Florida - \$9,518.49.

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- d. Contracts for Sale and Purchase of four lots on Dove Street for construction of a retention pond, Project No. C01902 - \$12,335.
- e. Supplement No. 72 to Continuing Consultant Contract for Engineering Services for Dove Street Retention Pond Construction, Project No. 01902, Frazier Engineering, Inc., Melbourne, Florida - \$27,000.
- f. Change Order No. 2 to contract for 20" Aerial Crossing on Melbourne Causeway, Project No. C96301, Stormwater & Underground, Inc., Titusville, Florida - \$11,451 and transfer back savings in the same amount from Water and Sewer Miscellaneous Projects.

Note: Item "f" was deferred until the next meeting.

- g. Change Order No. 4 to contract for D. B. Lee and Grant Street O&M Improvements, Project No. C97321, Wharton Smith, Lake Monroe, Florida – \$2,962.17.
 - h. Change Order No. 1 to contract for Wastewater Treatment Plant Electrical Upgrades, Project #C00317, Advanced Electrical Installation, Titusville, Florida - \$ 2,439.
 - i. Award of FY 2000-2001 SHIP funds in the amount of \$184,645 and \$5,000 for administration of the Purchase Assistance Program and the Homebuyer Education/ Housing Counseling Program, respectively, to Community Housing Initiative, Inc.
 - j. Contract for temporary employment services, Spherlon Staffing, Melbourne, Florida - \$82,000.
 - k. Annual contract for aquatic weed control treatment of 84 waterway locations throughout the city, Future Horizons Inc., Hastings, Florida - \$37,524.
12. COUNCIL ACTION RE: A presentation by the city's external auditors, Hoyman, Dobson and Company, regarding the audit of the city's financial statements for the 1999-2000 fiscal year.

(Note: The Comprehensive Annual Financial Report was distributed to Council on March 22.)

Debbie Bradley, Hoyman, Dobson, and Company, provided a brief presentation on the audit.

Mr. Contreras asked about our overall management rating. Ms. Bradley replied that the city is "way up there" in relation to the Accounting Department. She added that there are other jurisdictions that don't run as tight a ship as the city. Additionally, she noted that the city has highly technical and competent people.

Mr. Hill added that our fees are low because of the effort put forth by the Finance Department staff.

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Recessed: 8:54 p.m.
Reconvened: 9:05 p.m.

13. COUNCIL ACTION RE: Discussion of residency requirements for City Board membership.
(Requested by Mr. Jamie Nance)

From the agenda report: Mr. Jamie Nance requested this item because he was recently notified that his move outside of the city limits made him ineligible to continue his service on the Downtown Architectural Review Board. Mr. Nance believes that the Code simply requires him to have been a resident of the city for six months prior to the time of appointment rather than during his actual term.

Section 2-76 of the City Code provides the following:

“Any person who shall serve on any municipal board, municipal authority, or municipal committee of the city...shall be a resident of the city for 180 consecutive days six months immediately prior to the time of appointment... except where provided herein or by the general laws of the state.”

Section 2-76.1 of the City Code provides the following:

“A vacancy shall occur on a board upon the death, resignation, removal from office as authorized by law, or forfeiture of office whenever a member ceases to possess the prescribed qualifications.”

The Code has been interpreted to mean that board members are required to have been residents of the city prior to appointment and remain residents during their term. However, upon further reading of the relevant Code sections, the language is ambiguous. Some boards have very specific residency or business interest requirements.

Council should consider how they wish the residency provision to apply to the Downtown Architectural Review Board, and may wish to clarify this matter for other boards as well. A Code change to clarify is appropriate in either regard: residency required or residency not required. Once Council gives direction, a Code revision will be proposed.

Mayor Buckley said he is clear on the way this section of the Code has been interpreted. Mr. Palmer said “if it’s not broke, don’t fix it.” Mrs. Poole agreed.

Mrs. Wysor said Mr. Nance is asking Council to clarify whether he is eligible to continue his service on the board.

Based on consensus of Council, the Mayor stated that Mr. Nance may not continue his service. Additionally, he directed staff to return with an ordinance clarifying the current practice.

14. COUNCIL ACTION RE: A request for funding of a Naval Air Station Memorial at the

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Melbourne International Airport and Honor America. (Requested by Council Member Palmer)

From the agenda report: Council Member Ed Palmer is requesting the city fund a memorial to be placed at the Honor America Museum site to recognize the 63 pilots and two enlisted men who died in flight related accidents at the Melbourne Naval Air Station during World War II. Council Member Palmer has been working on behalf of Honor America with Mr. William Barnett to get a memorial placed at the Honor America site along with a similar memorial to be placed at the Airport.

The Naval Air Station was constructed on the site of what is now Melbourne International Airport at the beginning of World War II and commissioned on October 20, 1942 as Operational Training Unit #2. The training prepared pilots for aircraft carrier operations and aerial combat. This subjected the pilots to rigorous and challenging training. There were over 2,200 Navy and Marine pilots training in Grumman F4F Wildcat and F6F Hellcat fighter planes. Unfortunately, 65 young men died here.

The cost of the memorial is \$1,700, which includes a bronze plaque and base. Funding is available through transfer in the Non-departmental General Fund budget.

Mr. Palmer and Mr. Barnett also wish to discuss the possibility of further developing the area near Honor America into a war memorial park recognizing service in the various United States military engagements.

Mr. Palmer discussed his request and noted that there will be two monuments. The state will fund and place an historical monument in Trailer Haven at the site of the former base. The first request is for funding by the city to place a bronze plaque at the Honor America Plaza of Flags. The second request is for approval of a general concept to proceed with a memorial park to recognize all branches of the service.

Moved by E. Palmer/Contreras for the city to fund \$1,700 for the cost of the bronze plaque. Motion carried unanimously.

Moved by Poole/Walker for approval of the concept to develop a veterans memorial park to be located (on city property) between Honor America and the former site of the Sharing Center. Motion carried unanimously.

Mr. Palmer introduced William Barnett and noted that he served as a pilot at the Naval Air Station. Mayor Buckley reported that the city received an autographed copy of William R. Barnett's book "US Naval Air Station, Melbourne, Florida". The book is dedicated to the 63 Navy pilots and two enlisted men that died during operational training exercises at NAS Melbourne during World War II.

15. ORDINANCE NO. 2001-19 (A&V #240): (Public Hearing/First Reading) A proposed ordinance to abandon and vacate a 5-foot wide utility easement along the southern property line of 592 Ixora Drive. (Requested by Donald and Janice Dixon)

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Attorney Gougelman read Ordinance No. 2001-19 by title. Mr. Hill reviewed the agenda report. The applicants were present. There were no comments from the audience.

Moved by E. Palmer/Poole for approval of Ordinance No. 2001-19. Motion carried unanimously.

16. COUNCIL ACTION RE: A request for approval of Supplement No. 66 to the Continuing Consultant contract for services related to dredging canals in the Rio Lindo Subdivision, Frazier Engineering, Inc., Melbourne, Florida - \$14,900, and transfer of \$14,900 for this project from the Miscellaneous Local Option Gas Tax account.

Mr. Hill briefed Council. The homeowners from the Rio Lindo Subdivision have approached the city about dredging their canals. The canals have silted up over time making navigation difficult, if not impossible. The city has few canals and has not funded any canal dredging projects except one leg of the canal system in this subdivision as a remedial effort related to silt deposits from upstream development projects. This was about 10 years ago. In that case the city, homeowners, and developers each paid one third of the cost.

There are a total of 49 lots that have canal access. Of those, 38 are in the city and 11 are in the county. The city boundary splits this subdivision in such a manner that it would be impossible to effectively do the dredging without participation by both the city and the county. We have met with county representatives to discuss how to approach and finance this project. Brevard County has typically financed canal dredging projects by assessing the abutting property owners. We believe that a single county "sponsored" assessment project is possible for this subdivision. City property owners are requesting that the city finance at least part of the overall cost of the project. The canals are dedicated to the public on the original subdivision plat.

The first step towards dredging these canals is to define the cost. That is the purpose of this engineering effort. The two basic cost factors are the volume of material to be removed and the method/location for disposal of the material. The consultants will conduct a cross-section survey of the canals to determine the volume of material. An environmental sub-consultant will evaluate various methods of de-watering, handling, and transporting the dredged material. Unfortunately, there do not seem to be any nearby sites for constructing a berm-enclosed area for de-watering. That would be the most common and least costly approach.

The engineering will result in an accurate estimate of the dredging costs. The estimate is required in order to proceed with the assessment process. The city may also determine how much of the cost should be paid by the city and how much by property owners. If the project is to be financed through a county assessment, the county's standard for proceeding is to have 75% approval by property owners.

The proposed fee for the preliminary engineering is \$14,900. The work will be completed within 90 calendar days.

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The recommendation is for approval of Supplement No. 66 to Frazier Engineering's continuing consultant contract in the amount of \$14,900.00 and transfer of the \$14,900 funding for this project from the Miscellaneous Projects Local Option Gas Tax.

Mayor Buckley pointed out that 40 out of the 49 property owners have requested this. Mr. Palmer referenced the meeting held between the city and the homeowners. He noted that there is no question that there is a strong desire by the residents to have this work done. Additionally, they understand that once the cost is decided, it would be prorated.

Mrs. Palmer pointed out that the homeowners are also asking that the stormwater runoff be corrected. Mr. Hill confirmed that would be part of the investigation. He added that he has been told that most of the silting is the result of the biological process in the Lagoon. He agreed that a portion does come from runoff.

Moved by Poole/Hand for approval as recommended.

Mr. Contreras asked if the residents understand the probability of an assessment and that this will not be an all county/city funded effort. Mr. Hill said he believes the residents would like for it to be county/city funded; however, the city has been clear that there will probably be an assessment.

A brief discussion followed.

The question was called. Motion carried unanimously.

17. SITE PLAN APPROVAL (SP-2001-02): (Public Hearing) A request for site plan approval (Baymeadows Commercial Center) on an approximate 2.77-acre parcel in the C-2 (General Commercial) zoning district, located on the west side of Wickham Road north of Grand Meadows Boulevard and south of Post Road. (Owner: HARP Holding Company, Inc., applicant: Hugh Evans, and representative: J. Morris Smith) (P&Z 4/12/2001)

Ms. Braz briefed Council. The property was annexed in 1995 with the Baymeadows Subdivision and the commercial properties north and south of this site. The Commercial/Medium Density Residential land use and C-2 zoning was established at that time. The retention basin serving these commercial properties was constructed with the Baymeadows Subdivision. The site has never been developed but has been cleared since development of the subdivision.

The property has an adopted future land use designation of Commercial/Medium Density Residential and is zoned C-2. Two other portions of the commercial property already have been developed along the parent property. These include the adjacent (north) car wash and a convenience store/gas station south of the site. The property to the west consists of the Baymeadows Subdivision. A retention pond separates the homes in the subdivision from the site. The Comprehensive Plan, Future Land Use Element, requires special design/use restrictions for commercial facilities developing adjacent to residentially zoned or developed properties.

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The proposed two-phase plan of development consists of 22,631 s.f. mixed-use office (3,026 s.f. commercial, 3,026 s.f. bank, 11,889 s.f. office/retail, and 4,690 s.f. restaurant with 110 seats. A total of 122 parking spaces will be provided. The retention basin that provides for stormwater run-off has already been constructed on the adjacent property to the west. The proposed plan is designed to provide cross-access easements with adjacent properties to enhance traffic circulation and accessibility. Turn lanes will be provided according to Brevard County standards at the main driveway. This will result in the construction of a northbound left turn lane and a southbound right turn lane at the driveway. An easement will also be provided for the sidewalk.

The site was completely cleared and filled when the residential subdivision was constructed. An Environmental Impact Assessment (EIA) was performed with the subdivision review. The site plan complies with the Comprehensive Plan and City Code.

The Planning and Zoning Board and staff recommended approval of SP-2001-02, Site Plan for Baymeadows Commercial Center, prepared by Brad Smith and Associates of Melbourne, Florida, consisting of a two-sheet plan with Project No. 99-1107, dated 2/14/2001 and with a revision date of 4/3/2001, with the findings listed in the agenda package and the following conditions:

- 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 ten (10) percent in the amount of open space or vegetative areas on site or an increase by more than ten (10) percent in the size of the buildings as part of this plan approval.
- b. Provide cross access easements to the properties to the south across each driveway in order to provide for the eventual cross access of vehicular traffic to the existing access easement on the Texaco site at the corner of Grand Meadows Boulevard and Wickham Road, and provide the necessary sidewalk easement for the public sidewalk along Wickham Road.
- c. Provide driveway connections complying with the requirements of the Brevard County Traffic Engineering Division including appropriate deceleration lanes to accommodate northbound and southbound turning movements into the site.

Hugh Evans, applicant, provided additional stormwater information for Mrs. Poole. He noted that the system for this site was designed at the same time the subdivision was designed; they are under one SJRWMD permit. Each phase has to be resubmitted to SJRWMD.

Continuing, Mr. Evans agreed with the stipulations. Regarding “c,” he added that they will construct what the county will permit.

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Moved by Hand/E. Palmer for approval of SP-2001-02 subject to the proposed stipulations. Motion carried unanimously.

18. ORDINANCE NO. 2001-20 (CU-2001-05): (Public Hearing/First Reading) A proposed ordinance for a conditional use for automotive (motorcycle) repair on two platted lots in the C-2 (General Commercial) zoning district, located east of U. S. 1 (North Harbor City Boulevard) between Law Street and Creel Street. (Owner/applicant: Douglas Anthony, J. D. Cycle, Inc.) (P&Z 4/12/2001)

Attorney Gougelman read the ordinance by title and Mrs. Braz briefed Council. The site was originally built in 1952 as a duplex. This property contains a 2,607 s.f. building now used as a motorcycle parts retail establishment. The property has been zoned C-2 since at least 1972.

The site has an adopted land use of Commercial according to the Comprehensive Plan Future Land Use Map. The properties to the north and south have an adopted land use of Commercial and are zoned C-2. The property to the east across the alley has an adopted land use of Low-Density Residential and is zoned R-2 (6) (One-, Two-, and Multiple-Family Residential with a cap of 6 units per acre). A residence is located east across the alley, a commercial office to the north, and a restaurant/bar to the south. U. S. 1 forms the west boundary.

The site does not meet several of the requirements/conditions identified in the Code, including minimum lot size, lot frontage and distance/setback from residential properties. Motorcycle repair could cause disruptions to the residents to the east and the 100-foot minimum separation cannot be met by moving the operation on another location on this site. The applicant will seek variances to remedy these problems.

The owner is in the process of making improvements to the building and grounds. He has been working with the Police Department to provide security in the neighborhood by installing lighting on his building and providing an area for the police patrol to locate. He is also willing to replace fencing material so that the police can increase visibility.

The plans indicate an area for outdoor storage. Motor vehicles could be stored outside but other materials, such as parts, would not be permitted to be stored in a fenced area. All work/storage is required to be performed in a structure.

At the Planning and Zoning Board, three property owners spoke in opposition to the request. However, their objections seemed to be targeted to John's Alibi, the restaurant to the south of the site, which they referred to as a bar. The city is currently investigating whether the restaurant is functioning as a bar. It is not properly zoned or licensed for a bar; a bar requires a conditional use. The owner of the business was informed of this when he opened and he assured staff that he was operating a restaurant. Unless he can demonstrate that 51% of the revenues come from food, the owner will be in violation. It appears that this restaurant/bar is bringing a number of bikers into the area which has nothing to do with the proposed repair facility, which closes at 6 p.m.

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Staff believes the motorcycle repair use will not be detrimental to the welfare and with conditions attached to the use will be in harmony with the general purposes of the ordinance because it will not result in an increase of intensity of the use of the site, including traffic, parking or extending any preexisting encroachments into required setbacks. The requested conditional use is similar to many of the businesses in the area. The conditional use will not require the removal of trees or existing parking. Adequate parking exists on the site to serve the uses to be provided in the building.

The Planning and Zoning Board voted 3-1 for approval of the conditional use. Four votes are needed for a recommendation. Staff recommended approval of the request with the findings listed in the agenda package and the following conditions:

- a. The conditional use shall be consistent with the site plan survey prepared by Timothy L. Blackmon of Melbourne, Florida dated 7/12/2000 as marked with Code-required improvements.
- b. Any change to the site plan will require re-evaluation of the site plan by the City Engineering and Planning and Zoning Departments. Any substantial change to the site plan will require review and approval by the Planning and Zoning Board (Local Planning Agency) and the City Council. A substantial change includes, but is not limited to: a) a decrease of 10% or more of the open space or vegetative areas on site; b) any increase in the number of access points shown on the site plan; or c) a 10% or more increase in building size used for automotive/motorcycle repair.
- c. The owner/applicant shall make changes to the site including:
 1. Gravel the landscape area on the north side of the building.
 2. Add four trees along the south side of the property.
 3. Repair or remove the small wall along the property frontage.
 4. Add a two-foot high hedge and two trees along the front yard south of the main driveway and improve the ground cover condition/sod (consult with the Code Enforcement Officer to determine the most appropriate species of vegetation to use).
 5. Provide a paved access to the alley at the time the alley is paved.
 6. Keep the adjacent alley clean of debris, including weeds and trash.
- d. Variances will be required from the Board of Adjustment for minimum lot size, minimum street frontage, and distance from a residential use/zoning district.
- e. The repair facility shall be limited to motorcycles only.
- f. The alley behind the facility shall not be used for test driving motorcycles for sale or repair.
- g. Upon cessation of the conditional use for a continuous period of six months the use of the premises shall revert to the previous more restricted use classification.

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In such cases more restrictive uses shall be those uses permitted in the C-2 zoning district provided that all conditions of the permitted uses can be met.

Mrs. Palmer questioned the relevance of the Code issue with the bar. Mrs. Braz said it is the perception of the residents in the neighborhood that the bar and the motorcycle repair shop go together because a lot of motorcyclists frequent the bar.

Douglas Anthony, applicant, stated that he does not open his business until 9:30 a.m. and he closes at 6:00 p.m. He discussed his personal background and stressed that he is not responsible for the noise generated by the bar next door. He added that he believes his business has improved the area. He bought the building, invested his money, and has adopted this town as his own. He concluded by agreeing with the stipulations.

Mrs. Walker asked Mr. Anthony if he would agree to limit his hours from 9:30 a.m. until 6:00 p.m. Mr. Anthony replied yes.

A brief discussion followed regarding whether the business next door is a bar or a restaurant.

Moved by E. Palmer/C. Palmer for approval of Ordinance No. 2001-20 subject to the proposed stipulations. Motion carried unanimously.

19. ORDINANCE NO. 2001-21 (CU-2001-06): (Public Hearing/First Reading) A proposed ordinance for a conditional use to operate an animal day care business and veterinary clinic with on-site boarding of animals on a .24-acre parcel zoned C-P (Commercial Parkway), located on the east side of Apollo Boulevard, north of NASA Boulevard, southeast of Babcock Street and west of the FEC Railway. (Owner: Tiny Tots Petland and Resort, applicant: Michele D. Mailhot, and representative: Terryle Page) (P&Z 4/12/2001)

Attorney Gougelman read Ordinance No. 2001-21 by title. Ms. Braz briefed Council. The site was originally built in 1968 and previously operated as a child day care. The existing building has a number of non-conformities including building setbacks on the front and side yards, lot area, inadequate parking and inadequate landscaping area. This property contains a 2,626 square foot building. The property has been zoned C-P since at least 1972.

The site has an adopted land use of Commercial according to the Comprehensive Plan Future Land Use Map. The surrounding properties have a Commercial land use except the property east across the railroad tracks, which is the Tradewinds Subdivision (Low-Density Residential).

The Zoning Code requires a conditional use for a veterinary clinic, which according to the Planning and Zoning Administrator, is the use that most resembles a dog day care. Dog day care is not a listed use in the Zoning Code. The portion of the business operated as dog grooming and retail sales is a permitted use on this site.

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The site plan is a survey of the property showing the existing building as well as areas provided for parking. The site does not provide sufficient parking for the proposed use including parking for employees or patrons. Since the site has been vacant for more than 90 days, the property must be brought into compliance with the Zoning Code. With the exception of the existing building setbacks, this will require a variance from five provisions of the Code. The non-conformities do not necessarily indicate that the use cannot be provided; however, it makes it more difficult to comply with the standards for a conditional use established in the Zoning Code.

The operation could create a nuisance by having numerous barking dogs adjacent to retail/office and residences. This issue would have to be addressed and overcome or assurances would have to be made to ensure that barking and possible odors would not cause problems to adjacent or nearby property owners. One solution would be to apply the same conditions required of a veterinary hospital and/or to limit the number of dogs permitted outside to no more than four (same as permitted on a single-family home lot).

Staff believes the use will not be detrimental to the welfare and through certain conditions tied to the conditional use can be made to be in harmony with the general purposes of the ordinance. It will not result in an increase of intensity of the use of the site, including traffic, parking or extending any preexisting encroachments into required setbacks. The conditional use will not require the removal of trees or existing parking.

One commercial property owner has objected to a dog kennel in the area. At the Planning and Zoning Board meeting, there were several residents from the Tradewinds Subdivision who objected to the potential barking and odor. Staff believes that these problems can be overcome with the proposed stipulations. In order to address the concerns of the neighborhood, Council could consider adding a stipulation that would prohibit overnight boarding of animals (other than animals for sale). A limitation on the size of the animals could also be considered but this could cause a problem for the veterinary use.

The Planning and Zoning Board recommended denial. If Council wishes to approve the request, staff recommended the findings listed in the agenda package and the following conditions be incorporated:

- a. All conditions for boarding of animals shall comply with the standards established for veterinary hospitals in the C-P zoning district, Appendix B, Article XII, Section 9 (A)(3)(b) (1) and (2):
 - (1) All areas used for boarding or temporary housing of animals shall be completely enclosed unless appropriate safeguards are constructed to control objectionable odors and/or noises, as determined by the City Council.
 - (2) Any area used for boarding or temporary housing of animals shall be buffered from all adjacent properties by a visual and aural screen, meeting the specifications of Article XVIII, Paragraph (14), and any other conditions required by the City Council.

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- b. The applicant must provide Code complying parking on the site or obtain variances from the Zoning Board of Adjustment.
- c. If variances are granted permitting less than the Code required front landscaping area, the owner/developer shall provide supplementary landscaping in the Apollo Boulevard right-of-way. Such landscaping shall require approval by the city.
- d. The driveway apron connection to Apollo Boulevard shall be modified to provide a 24-foot wide driveway within the Apollo Boulevard right-of-way.
- e. The conditional use is subject to the site plan survey for Petland and Resort consisting of a one-page survey prepared by Stephen W. Quesnel of PLS, Inc., of Palm Bay, Florida, dated December 13, 2000.
- f. Upon cessation of the conditional use for a continuous period of six months the use of the premises shall revert to the previous more restricted use classification. In such cases the more restrictive use shall be uses permitted in the C-P zoning district provided that all conditions of the permitted uses can be met.

In order to address the concerns of the neighbors as expressed at the Planning and Zoning Board meeting, staff recommended adding the following stipulation:

- g. There shall be no overnight boarding of animals except those for sale.

Mrs. Poole expressed concern with the numerous non-conformities related to this site. She stated that an opaque fence can't stop noise from barking dogs. Additionally, neighbors have been woken by barking puppies. She questioned how all of these items can be corrected. Mrs. Braz replied that the applicant will have to go before the Board of Adjustment.

Continuing, Mrs. Poole asked how the applicant is operating without the proper zoning. Mr. Hill explained that the grooming and retail sales of pets and pet supplies are permitted uses. The request to expand the operation is what triggered the conditional use.

Mrs. Palmer stated that regardless of whether or not the conditional use is granted, puppies that are for sale will remain in the building overnight. Mrs. Braz said correct. The applicant is entitled to pet retail and grooming in this zoning district.

Michele Mailhot, applicant, distributed pictures of the facility. She said she had no idea that the property had all of these non-conformities. She spent everything in order to purchase the building. Her daughter wants to become a veterinarian and that is why she requested the expanded use. She stated that she installed a 6' fence around the property. Two hundred feet of additional property and a stand of large trees are located behind the fence. Ms. Mailhot stressed that her building can't be seen from across the railroad tracks. She noted that she specializes in small, miniature dogs and they average

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seven pounds. The day care facility accommodates dogs that are up to 25 pounds. She noted that on the other side of the railroad tracks (in the residential area) there are huge dogs that bark all day. She mentioned that it could be a bad area.

In response to Mrs. Walker, Ms. Mailhot assured Council that she does not use a puppy mill as the source for her dogs. A lengthy discussion followed regarding the care and treatment of the animals at her facility and the condition of her facility.

Mayor Buckley referenced the stipulations, including stipulation “g.” Ms. Mailhot said if she eventually operates a veterinary clinic, animals would have to stay overnight.

Philip Ippolito, 1078 Ellen Court, stated that he and his girlfriend use this facility for their baby beagle. He stated that he would not use this business if it were unsanitary or unsafe.

Mrs. Poole asked how long he has used the day care. Mr. Ippolito responded about two weeks.

Ann Davis, 2394 Lisa Lane, stated that she owns property in the area. She added that this is a good service for pets; however, she does not believe this is the right location. The building is noisy and it echoes. The fence provides a visual screen – not an aural screen. She said that she is not allowed to have more than three or four pets; therefore, she does not believe an animal day care should be allowed to have numerous pets. Additionally, she questioned if the runoff from the yard will lead to the ditch in the back. Ms. Davis stressed that the sound carries at night. Regarding the comment about Tradewinds being a “bad area,” she disagreed and added that she resents that statement.

Lisa Mills, 704 Wisteria Drive, stated that she lives behind the property and it sounds like a pound. She informed Council that the loud pitch bark of the small dogs gets very tiring.

Mrs. Palmer asked Ms. Mills how far her home is from the facility. Ms. Mills said within 500’.

Attorney Gougelman asked the applicant if there will be a greater number of dogs on the premises if a conditional use is granted for the day care business and the veterinary clinic. Following a brief discussion, Ms. Mailhot said yes.

Mr. Contreras asked what part of the business would cease if the veterinary service is eventually established. Ms. Mailhot said the day care facility.

Responding to Mr. Palmer, Ms. Mailhot provided additional information about the cats in the photographs.

Lisa Jewel, Melbourne Beach, stated that she is employed in the area. She utilizes the day care facility and stated that she is pleased with the service. She added that Ms. Mailhot has made a lot of improvements to the site and the interior is immaculate.

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Moved by C. Palmer/Walker for approval of Ordinance No. 2001-21 subject to the proposed stipulations, with the exception or omission of “g.”

Mrs. Palmer said she would not be able to support this if the property was directly behind the residential area. However, there is 200’ of property, railroad tracks, and a treed area that provide buffer. There are also a number of people in the community that need this kind of service.

Mrs. Walker agreed.

Mrs. Poole repeated her concerns with the number of non-conformities on the site.

Mr. Contreras asked the City Attorney the point of his question to the applicant. Mr. Gougelman said he was trying to develop some basis to defend the item if Council denied it because the overnight boarding of animals for sale is already permitted.

The question was called. The roll call vote was:

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

Nay: Poole and Buckley

Motion carried.

20. ORDINANCE NO. 2001-22 (Z-2001-909AD/LDR-2001AD): (Public Hearing) A proposed ordinance to amend the Zoning Code and Land Development Regulations to include specific provisions for temporary labor agencies and to find the proposed amendment consistent with the Comprehensive Plan, affecting commercially and industrially zoned properties throughout the City. (P&Z 4/12/01)

Mr. Gougelman read Ordinance No. 2001-22 by title.

Mrs. Braz briefed Council. The city has had numerous complaints from citizens and property owners who are located in proximity to temporary labor offices. Some of the complaints involve inappropriate behavior of workers or persons seeking work at the employment agency sites prior to delivery to work sites.

The proposed Code amendment will establish standards for the location of and the operation of temporary or day labor employment agencies throughout the city. Because of the conduct of clients and the lack of standards to accommodate a sometimes sizeable clientele arriving and departing such locations at one time, the lack of standards has created an adverse impact on area property owners, businesses, and residents. Some of the regular complaints include noise, insufficient parking, loitering and drinking outdoors, public urination, and excessive litter.

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Usually this type of employment agency operates differently than other temporary or regular employment agencies in that the workers arrive en masse at one time, usually early in the morning and are delivered with provided transportation to a work site. They also generally return en masse from the work site at one time. While waiting to register for employment and be transported, the clients are not consistently provided an area to accommodate their needs, nor are they supervised. Many operations have not provided adequate parking for such activities but have only provided parking meeting the standard for an office and not an assembly or congregating use.

In order to address the unique situation caused by such activities staff is proposing to amend the Code in such a way to specifically address this type of employment agency, which in the opinion of staff, exhibits different characteristics than the traditional employment agency. Staff proposes to amend the Zoning Code and the land development regulations by providing a specific definition, identifying districts where such uses are permitted and prohibited, establishing performance standards, and parking requirements.

Specifically the ordinance would provide the following:

Amend Appendix B, Article V by creating the following definition:

(77.05) Temporary Labor Agency. An employment agency which, on a regular basis, provides day labor services for various users whose clients are routinely on site waiting job assignments.

Amend Appendix B, Article XII, Sections 8, 10, 11, 13, and 16 to make temporary labor agencies a prohibited use in the R-P (Residential Professional District), C-1 (Neighborhood Commercial District), C-1A (Professional Office and Services District), C-3 (Central Business District) and I-1 (Institutional District).

Amend Appendix B, Article XII, Sections 9, 12, 14, and 15 to create temporary labor agencies as a permitted use in the C-P (Commercial Parkway District), C-2 (General Commercial District), M-1 (Light Industrial District), and M-2 (General Industrial District) with several performance standards including:

- (1) Provide a gathering area, screened from public view with sanitary facilities available, and a garbage disposal receptacle.
- (2) Provide secured bicycle parking per City Code, Appendix D, Chapter 9, Article V, Section 9.72 (54.5).
- (3) Provide a pick-up area on the site which does not impede traffic on public streets.
- (4) Provide transportation away from the agency location for those not receiving employment for that day.

Amend Appendix D, Chapter 9, Article V, Section 9.72, by creating a subsection (54.5) Temporary labor agency.

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(54.5) *Temporary Labor Agency* - One space per three employees/clients seeking temporary labor employment plus one space for each office employee of the agency plus one bicycle parking space per each employee/client seeking temporary labor employment.

The Planning and Zoning Board recommended that the proposed ordinance prohibit temporary employment agencies/day labor in the C-P district but otherwise supported the proposal. Staff recommends that the C-P district be included since those areas require large areas, which are more conducive to this type of businesses than an intensely developed area.

Because the change involves permitted or prohibited uses in the various districts, a display advertisement is required prior to two public hearings. Therefore, if Council wishes to adopt the ordinance, two additional public hearings will need to be scheduled.

Mayor Buckley said the ordinance is long overdue. Mrs. Poole asked if this would also apply to telemarketing firms. Mrs. Braz replied no.

Mr. Palmer asked about the number of sanitary facilities required. Mrs. Braz said it would depend on what the Code required for the number of people expected. Mrs. Poole asked if portable facilities could be used and Mrs. Braz said not on a permanent basis.

Following a brief discussion, Mr. Hill said the ordinance will be reviewed prior to first reading to determine if the language can be strengthened.

Moved by C. Palmer/Walker for approval of Ordinance No. 2001-22. Motion carried unanimously.

21. COUNCIL ACTION RE: Board Appointments

- a. Babcock Street Community Redevelopment Agency Advisory Committee – one regular member and one alternate member

Mrs. Poole nominated Karen Harshaw as a regular member and Mrs. Palmer nominated Kim Meehan as a regular member.

The roll call vote was:

Harshaw: Contreras, E. Palmer, Poole, and Buckley

Meehan: Walker, Hand, and C. Palmer

Appointed: Karen Harshaw for an unexpired term, plus a full two-year term ending May 3, 2003.

Moved by Poole/Walker to appoint Kim Meehan as the alternate member. Motion carried unanimously. (Unexpired term, plus a full two-year term ending June 7, 2003.)

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Recessed: 11:05 p.m.
Reconvened: 11:11 p.m.

22. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Hill reported that he was distressed to learn that the county staff has proposed an expansion of the landfill activities. His concern relates to the fact that after all the effort regarding the transfer station, the county never mentioned plans for the landfill expansion. Apparently, the county purchased 68 acres of land last year along Sarno Road for this purpose. Mr. Hill spoke with the Brevard County Solid Waste Director about his concerns. At this point, the county has withdrawn their application. Mr. Hill stated that he will keep Council apprised of the situation.

Mr. Hill agreed with Mrs. Poole that this goes against the spirit of the Joint Planning Agreement.

Mrs. Palmer cautioned that the county will take the path of least resistance. If there is none from this Council, that is the path they will take.

Mr. Gougelman said the city needs to ensure that if there was a lease back arrangement following the sale, the lease interest needs to remain on the tax rolls.

23. ADJOURNMENT

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

The meeting adjourned at 11:20 p.m.

City Clerk – 5/4/2001

Approved by Council: _____