

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 22, 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. Pastor Janna Hogan, Jesus is the Key, gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

Present:	John A. Buckley	Mayor
	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 announced that the city received the Florida County/City Management Association Award on May 11 for Innovations in Communication/Technology for the Reverse 911 system; development of the Geographical Information System; safety/training coordinator program; use of web site and e-mail; and the success of the Groundwater Guardian program. The award was presented to Mr. Hill.

Mayor Buckley reported that the city received a \$1,000 check from Grace Han and Jimmy Chao, owners of Lucky Garden Restaurant. The \$1,000 represents one-half of their sales on the first anniversary of their business in Melbourne (April 19, 2001). They asked that the city use the donation for beautification projects.

5. APPROVAL OF MINUTES - May 8, 2001 regular meeting

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

6. CITY MANAGER'S REPORT

Mr. Hill reported that the Fourth of July fundraising effort is going very well. He noted that staff is working on a traffic plan to ease the congestion following the fireworks display. The plan is to close off a portion of New Haven Avenue east of U. S. 1 to allow access for buses.

Additionally, he reported that the Brevard County Commission unanimously adopted the Joint Planning Agreement adopted by City Council last month.

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7. PUBLIC COMMENTS

Coral Lee Craig, 2876 Stearns Avenue, Palm Bay, informed Council that while visiting the hospital Monday evening, her car was towed from a (private) parking lot located on the west side of the hospital at Michigan and Oak. She wanted Council to know about the exorbitant cost (\$150), especially since the property her car was towed from is vacant.

Tim Higgins, 1805 Riverview Drive, said that on May 16 he was hit by a car in the crosswalk at Strawbridge Avenue and U. S. 1. He noted that the pedestrian walk signal flashes for approximately five seconds – not enough time to clear the roadway. Mr. Higgins is waiting for a response from Officer John Porter regarding actions that need to be taken to get the crossing time increased.

Attorney Gougelman confirmed that John Porter is working on the issue. He added that the roadway is under the jurisdiction of FDOT.

Mrs. Palmer referenced Ms. Craig's situation and asked if there are price gouging laws that would apply. Attorney Gougelman replied that he is not familiar with any relating to towing companies; however, there are regulations regarding how the tow away zone should be posted.

Mr. Hill said that staff will investigate whether the "tow away" sign posted on the property meets the requirements of law.

UNFINISHED BUSINESS

8. COUNCIL ACTION RE: Change Order No. 2 to contract for 20" aerial crossing on Melbourne Causeway, Project No. C96301, Stormwater and Underground, Inc., Titusville, Florida - \$11,451; transfer savings in the same amount from Water and Sewer Miscellaneous Projects. (Postponed by Council 5/8/2001)

Mr. Hill briefed Council. The item was postponed at the April 24 and May 8 meetings to allow staff time to investigate whether the contractor would split the cost with the city. Staff has determined that the change order is necessitated by additional work required due to an unknown cavity that exists under the U. S. 192 roadway. The cavity resulted in the need for additional material and work; the contract provided for additional work to be paid at unit prices.

Moved by Poole/Contreras for approval of Change Order No. 2 to the contract with Stormwater and Underground, Inc. for the 20" aerial crossing on Melbourne Causeway, Project No. 95301 in the amount of \$11,451. Motion carried unanimously.

9. ORDINANCE NO. 2001-22 (Z-2001-909AD/LDR-2001-03AD): (Public Hearing/Second Reading) 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 commercial and

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industrial zoned properties throughout the city. (First Reading 5/8/2001)

Attorney Gougelman read Ordinance No. 2001-22 by title. There were no comments from the public.

Moved by Hand/Walker for approval of Ordinance No. 2001-22.

Mr. Palmer questioned whether this use should be allowed in the C-P district. He read the C-P district and intent, which includes "...the provisions of this district are intended to apply to areas located adjacent to a main highway. The types of uses permitted and restrictions are intended to serve the needs of the motorist and provide an amenable impression of the city. Large lot sizes and other restrictions are intended to minimize frequent ingress and egress to the highway from abutting uses, thereby allowing the thoroughfare to serve its primary function of carrying an uninterrupted flow of traffic."

Additionally, he noted that principal uses within this district include retail stores, display rooms, professional offices, hotels, motels, restaurants, etc. He concluded by saying allowing a temporary labor agency in the C-P zone would be detrimental to businesses.

Mayor Buckley said he understands the argument; however, the temporary labor agencies in existence are located on U. S. 1, Eau Gallie Boulevard and Babcock Street, all zoned C-P.

Mr. Palmer's motion to delete the C-P zone from the ordinance did not receive a second.

The question was called. The roll call vote was:

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

Nay: E. Palmer

Motion carried.

10. ORDINANCE NO. 2001-23: (Public Hearing/Second Reading) A proposed ordinance to adopt the Community Redevelopment Plan for the Olde Eau Gallie Riverfront Community Redevelopment District. (First Reading 5/8/2001)

Mr. Gougelman read the ordinance by title.

Rick Hester, 617 Eau Gallie Boulevard (Rick's Furniture), clarified that at the last meeting the residents elected to have Dave Wickham speak and the business owners elected to have George Alexander speak. He assured Council that many people were in the audience in support of the plan. He noted that the efforts by the residents and the merchants have been hand in hand. Mr. Hester commended staff and the consultants and said the plan reflects an outline of ideals of what would be nice to see in the Eau Gallie area. He asked that Council Members not take one item out of the plan and scrutinize it. He added that he doubts one person, including himself, agrees with the

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entire plan; however, everyone agrees with the concept of revitalization of the Eau Gallie area. Regarding the letter of objection from Mr. Ayres of Conchy Joe's, Mr. Hester reported that he (Mr. Ayres) had the same opportunities as everyone else to participate.

Mr. Hester concluded by saying that there is mistrust among lifelong residents of the Eau Gallie area that this plan is smoke and mirrors and that Council has a hidden agenda with regard to the plan. He stressed that is exactly why the plan needs to be adopted – to dispel the rumors and begin the process of healing old wounds.

David Wickham, 1770 Highland Avenue, lifelong resident of the area, stated that this plan is important for the Eau Gallie area of Melbourne. The residents have seen growth pass by, crime escalate, and property values decrease. Mr. Wickham stressed the importance of adopting the plan now in order to capture the Walgreen's money for the next 20 years. He concluded by commending staff and the consultants for the team approach of keeping everyone informed and involved.

Tibby Parker, co-owner of Fifth Avenue Art Gallery, 1470 Highland Avenue, stated that she represents about 50 people from the gallery. She noted that as a member of the steering committee, it has been a rewarding experience with the residents and businesses working towards building consensus. She echoed the comments of the first two speakers and thanked staff and the consultants. She concluded by saying that the people in the area are interested in seeing property values increase and businesses prosper. Redevelopment is a win/win situation; however, the residents and businesses realize there is much work to do. She asked for Council's support.

That concluded the comments from the public.

Moved by E. Palmer/C. Palmer for approval of Ordinance No. 2001-23.

Mrs. Poole stated that she is voting for the ordinance although she has concerns with specifics of the plan. She views this as a concept, just as the redevelopment of Downtown Melbourne started many years ago. Mrs. Poole said she hopes the people involved reconsider making Montreal Avenue the main thoroughfare. She believes this will cut too close to the area the city wishes to preserve as an historical residential section.

Mr. Palmer agreed that the plan is the result of a cooperative effort. Although it may not be perfect, it is a step in the right direction of moving the Eau Gallie section of Melbourne into the mainstream.

Mrs. Walker thanked staff, the consultants, the residents and the business owners for working so hard on the plan and revitalization effort.

The question was called. The roll call vote was:

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

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Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2001-24: (Public Hearing/Second Reading) A proposed ordinance to adopt the Urban Infill and Olde Eau Gallie Riverfront Urban Infill Plan for the Olde Eau Gallie Riverfront Community Redevelopment District. (First Reading 5/8/2001)

Attorney Gougelman read the ordinance by title. There were no comments.

Moved by Hand/Walker for approval of Ordinance No. 2001-24. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2001-25: (Public Hearing/Second Reading) A proposed ordinance establishing a tax increment financing district for the Olde Eau Gallie Riverfront Community Redevelopment District. (First Reading 5/8/2001)

Attorney Gougelman read Ordinance No. 2001-25 by title. There were no comments from the audience.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2001-25. The roll call vote was:

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

Nay: None

Motion carried unanimously.

13. ORDINANCE NO. 2001-26: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 2 to clarify residency requirements for city board members. (First Reading 5/8/2001)

Mr. Gougelman read the ordinance by title.

Jose Landman, resident of Miami and property owner in Melbourne, asked if this ordinance would prohibit someone who is not a resident from serving on the Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee.

Mr. Hill clarified that several boards have exceptions, including the redevelopment committees, and this ordinance recognizes that. Melbourne residents or persons engaged in business within the redevelopment area would be permitted to serve.

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Moved by Poole/Hand for approval of Ordinance No. 2001-26. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

14. COUNCIL ACTION RE: Consent Agenda

Mayor Buckley referenced the memorandum from Mr. Hill asking that item “e” be withdrawn due to a bid protest.

Moved by C. Palmer/Walker for approval of items a, b, c, d, f, and g as recommended.
Motion carried unanimously.

The consent agenda was approved as follows:

- a. Resolution No. 1692: A proposed resolution authorizing the City Manager to apply for Front Porch Florida designation for the Booker T. Washington neighborhood from the Office of Urban Opportunity.
- b. Purchase of two six-inch vacuum assisted trash pumps for the Water Production Division, Thompson Pump & Manufacturing Co., Inc., Port Orange, Florida – \$40,600.00.
- c. Refurbishment of a Channel Monster grinder unit for the Grant Street Wastewater Treatment Plant, JWC Environmental, Winter Park, Florida - \$20,050.00.
- d. Purchase of an expanded Island Oasis Playground System for Magnolia Park, Dominica Recreation Products, Longwood, Florida - \$25,630.44.
- e. Annual contract for sewer structure refurbishment, PIM Corporation South, Piscataway, New Jersey – \$150,000.00.

Note: Item “e” was withdrawn due to a bid protest.

- f. Agreement with the Cloisters Homeowners’ Association for an irrigation meter in the island on Normandy Drive.
- g. Purchase of seven Gemini Headliner Video Systems for police vehicles, The Specialized Group, Cape Coral, Florida - \$26,670.00.

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15. RESOLUTION NO. 1693: A proposed resolution authorizing participation by the city with the Brevard County Office of Emergency Management and State of Florida as a FEMA Project Impact Community.

Council delayed the item until Ms. Mary Bolin of the Brevard County Project Impact staff arrived.

At the end of the meeting, prior to the last item, the following motion was made:

Moved by Hand/C. Palmer to postpone this item until the next meeting to allow Mary Bolin an opportunity to make a presentation. Motion carried unanimously.

16. ORDINANCE NO. 2001-27 (Z-2001-908AD[C]): (Public Hearing/First Reading) A proposed ordinance to rezone a 15.95-acre, nine block area of Downtown Melbourne from C-2 (General Commercial) to C-3 (Central Business District) and create an overlay district with design and performance standards, located west of Riverview Drive, north of Strawbridge Avenue and east of Tangerine Street. (Requested by City of Melbourne) (P&Z 5/10/2001)

Attorney Gougelman read Ordinance No. 2001-27 by title.

Ms. Braz briefed Council. This is a proposed ordinance to rezone a nine-block area of the Downtown area from C-2 to C-3. Staff initially proposed changes in 1999. In late 2000 a resident in the area requested that a portion of the Downtown area be rezoned to better accommodate residential uses.

Two changes were recently adopted (Ordinance Nos. 2001-13 and 2001-14). Council denied the third change because of a concern about building height. Staff presented additional options, including an overlay district for the area proposed for C-3 zoning. The proposal was presented to Council on April 10. City Council, the Downtown Redevelopment Committee, and the Planning and Zoning Board favorably received the proposal.

The adopted future land use on the properties is mixed-use commercial/high density residential; however, C-2 zoning does not allow for residential uses. The area has been zoned C-2 since at least 1972 when the zoning ordinance for the combined City of Melbourne and City of Eau Gallie was adopted. This area of Downtown is under-utilized and with its current zoning has few prospects for reaching its potential to become an integral and fully functional part of the Downtown area. For the Downtown area to become successful for more than just business hours incentives have to be provided to attract people to Downtown on a permanent basis. This includes providing for a healthy mix of retail, office, and residential uses.

Many of the structures in this area do not conform to the C-2 Code required setbacks or parking requirements. The specific proposal is to change the zoning on the nine block area from C-2 to C-3 and to amend the Zoning Code by creating an overlay area. The Code amendment creates a specific area where the standards to be applied in the

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overlay district are identified. This also requires a change to the C-3 section of the Code to identify that a portion of the C-3 zoning district has special design restrictions not present in other areas zoned C-3. The Code will indicate that a maximum building height of 40 feet, along with other design restrictions, applies in that portion of the city. A description of the nine block area and purpose of the district will also be included. The code is proposed to read as follows:

In order to promote a more sustainable Downtown Redevelopment District, that portion of the Downtown Redevelopment District located west of Riverview Drive, north of Strawbridge Avenue and east of Tangerine Street, with the exception of Block 28, Camp's Plat, shall comply with the following design and performance standards unless granted a variance from these provisions by the Board of Adjustment or City Council, or granted a conditional use by the City Council.

1. Building heights shall be limited to 40 feet with a floor area ratio not to exceed 2.0
2. Any building height over 40 feet shall be approved only by obtaining a conditional use permit from the City Council.
3. All construction and redevelopment shall include pedestrian access to the street and may require pedestrian access to adjacent properties.
4. Parking should be located behind buildings, if possible, and screened from public view.
5. Mixed uses with retail and offices on the first floor and offices or residential uses on additional floors are encouraged.
6. Rear access should be provided for deliveries and trash pick-up.
7. The preservation of historic structures is encouraged.
8. No structures shall be permitted within ten (10) feet of Riverview Drive.
9. The City Council may reduce required parking and the dimensions of drive aisles and parking space size in order to enhance the goals of the redevelopment district, including preserving vegetation and the historical character of the area.

A portion of the area is located over an aquifer recharge area so special designs must be considered to ensure that the area continues to function in this capacity. Other design and performance standards may be considered for application in the future as the redevelopment plans are further refined and neighborhood improvement plans are prepared and adopted. Other specific standards that may be considered include design standards related to materials used, textures, colors, sign controls, trash disposal and loading regulations, fences, wall regulations, and other screening, landscaping, utility locations and modifications, on street and off-street parking, traffic calming, sidewalk treatments, utility locations, lighting including fixture design and illumination, architectural themes, canopies and awnings, access and maintenance standards, etc. These and other controls are often some of the key design elements that make for attractive, and economically and functionally successful areas. This is similar to establishing deed restrictions that are so prevalent in newly developing residential and commercial projects.

Sondra Austin and Lee Austin, who own the Miyako Restaurant property, object to the change. They are represented by Attorney David Dyer. Staff is working with the Austins to make sure they understand the options since their principal objection seems to be

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against residential uses. Additionally, letters of objection have been submitted by James Moore, Moore's Car Care, 1818 South Harbor City Boulevard, and Robert Cothorn, Central Florida Drycleaning, Inc., (1111 and 1115 East Palmetto Avenue and 1817 South Harbor City Boulevard).

The Planning and Zoning Board and staff recommended approval.

Mrs. Palmer asked why Block 28 of Camp's Plat is not included in the proposal. Mrs. Braz replied that is the location of East Coast Lumber. It is an industrial, non-conforming use.

Mrs. Palmer noted that Mrs. Braz has mentioned that Mr. Moore's business or sale of his business would not be hindered by this change. She asked why the change. Mrs. Braz said staff did not pick out certain properties. The entire area has an image that needs to be improved. We do not want to encourage automotive uses, sales, or repair. Consequently, staff is recommending C-3 zoning.

Based on that, Mrs. Palmer disagreed that the change would not hinder the Moores. Mrs. Braz explained that the business could be sold and continued as long as it did not remain vacant. However, if the business closed, it could not be reopened. And, the business could not be expanded. Mrs. Braz confirmed that if the business were destroyed by fire or hurricane, it could not be rebuilt. Mrs. Palmer concluded by saying this proposal does have an impact.

Mrs. Palmer disclosed that she spoke with Jim Moore who requested that his property not be rezoned. She added that he has had this business for 27 years.

Mayor Buckley opened the public hearing.

Karl Kiser, 551 Young Street, stated that he owns six lots and a business in the area. He supports the zoning change to C-3 and added that he believes the change will preserve historic buildings and enhance redevelopment.

David Dyer, attorney representing Lee and Sondra Austin, owners of the Miyako Restaurant property, noted that his clients' property is for sale; the restaurant is a tenant. He reported that there is an honest disagreement between staff and his clients on the future usability of the property. His clients do not envision residential uses fronting U. S. 1. He noted that Mrs. Braz has gone the extra mile to communicate; however, his clients remain convinced that C-3 zoning is just not right for this property. They believe it would be marketable as C-2 zoning. That seems to be what the market indicates the property would be used for. If rezoned to C-3, then they no longer have a market.

Mayor Buckley asked Mr. Dyer if he is aware of the type of business interested in the property. Mr. Dyer replied a convenience store or something along those lines.

That concluded the comments from the public.

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Moved by Contreras/Walker for approval of Ordinance No. 2001-27 with the findings from the Planning and Zoning Board.

Mrs. Palmer stated that Mr. Moore and his family have had a service business in this area for 27 years. That demonstrates the need for the service and she is not comfortable with the city making a decision to eliminate that service by changing the zoning. She pointed out that the area excludes the lumber company, which is also a long time successful business and less compatible with Downtown uses. She added that she understands the need to keep residential uses and she supports mixed residential and commercial; however, she can't support taking away the rights of a 27 year old established business in the community.

Mrs. Poole pointed out that in March the proposal was to rezone this area from C-2 to C-1 – not C-3. She compared the C-3 and C-1 zoning districts and noted that C-3 is intended to permit intensive development; residential uses are strictly accessory in nature; building heights to 80'; and zero lot line. C-1 provides for a mixed use of residential and commercial and there are yard requirements.

Continuing, Mrs. Poole referenced the April 26 letter from Mrs. Braz to the property owners affected by this rezoning. She said the letter indicates that the city is proposing rezoning from C-2 to C-3 with a height limitation of 40'. The letter does not indicate that the ordinance provides for building height over 40' with a conditional use from City Council. Additionally, parking spaces, drive aisles, and parking space size can be granted a variance from the Board of Adjustment. She stated that the letter to the property owners was misleading.

Additionally, Mrs. Poole said that the Planning and Zoning Board and Downtown Redevelopment Committee members had been told that buildings within 60' of Riverview Drive would not exceed 40'; however, the current ordinance indicates that no structures shall be permitted within 10' of Riverview Drive. She stressed that the 60' provision should be in the ordinance as it was presented to the various boards and City Council.

Mrs. Poole added that the Planning and Zoning Board recommended denial of C-3 zoning. She said she believes that if the Downtown Redevelopment Committee had been given accurate information, perhaps they would have recommended C-1 zoning.

In conclusion, Mrs. Poole stated that the property owners should be provided with a copy of the ordinance, which includes the overlay district provisions.

(Note: during Mrs. Poole's discussion, a brief discussion occurred and Council agreed to extend Mrs. Poole's time by granting a total of 15 minutes.)

Moved by Walker/E. Palmer to postpone this item until the next meeting to allow the attorney time to review Mrs. Poole's comments. Motion carried unanimously.

Recessed: 9:05 p.m.
Reconvened: 9:15 p.m.

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17. COUNCIL ACTION RE: A presentation regarding proposed Holmes Regional Medical Center expansion. (Requested by Mr. Tom Mills)

Tom Mills, Vice President/Facilities, Holmes Regional Medical Center, reviewed information regarding the proposed hospital expansion. Expansion is expected to occur over the next three – five years and will include new parking facilities, a proposed north complex, emergency department/trauma expansion, and roadway improvements. Regarding the north complex, they are simply exploring the feasibility at this point.

Continuing, Mr. Mills stated that the hospital is always in a reactive mode preparing for services. They review information, including the growth of population and age of population. Technological developments become part of a standard of care that people expect. Consumers are becoming more educated and sophisticated. Additionally, it is very important for the hospital to recruit the very best physicians, nurses, etc. This requires a modern facility.

Mr. Mills discussed the services the hospital provides, including the helicopter. He acknowledged that there are neighbors in the audience who are opposed to the helicopter and specifically commented that it is noisy and generates smoke; however, it carried 1,000 patients last year. It is a wonderful program that saves lives.

Mr. Mills provided an overview of the expansion as follows:

East parking lot: demolish existing building; create new parking lot for patients/visitors; pave existing dirt lot for associates; eliminate on-street parking on Hickory Street; pipe the ditches along Sheridan Road; add landscaping; and improve pedestrian safety.

Proposed north complex: Add a six-story patient tower (85' high); four – six story medical office building; four-story parking garage capable of handling 500 cars; realigning Sheridan Road; possible purchase of Circles of Care property; and the provision of temporary parking for employees on the vacant parcel during construction.

Emergency/trauma expansion: Add parking lot and expand facility.

Regarding the north complex, Mr. Mills said a good approach, but not the best, is to construct across Sheridan and connect the two facilities with a pedestrian bridge. The negative aspects include the long distance between the two facilities via the bridge and pedestrian safety concerns. They are exploring the feasibility of rerouting Sheridan Road by the hospital thereby allowing that portion to be abandoned. This would allow the north complex to be expanded immediately adjacent to the hospital. It would offer tremendous advantages, including private rooms in the north and south ends of the hospital.

Mr. Hill discussed the Circles of Care property and noted that the hospital is considering purchasing the property.

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Mayor Buckley stated that several of the items involved with the expansion, including the abandoning and vacating of Sheridan Road, will be considered quasi-judicial items. Therefore, Council Member will not be able to indicate how they would vote on such an item.

Mrs. Walker asked which of the expansion projects would take priority. Mr. Mills said the two parking lots are in the design stage; they would like to complete those this year. Mrs. Walker said the emergency/trauma section should be the priority; people have to wait for emergency treatment. Mr. Mills said they expect that to be completed within two years. But that, too, is subject to hospital board approval. Later in the discussion, Mrs. Walker said the community will benefit from all of the goals outlined by Mr. Mills.

Mrs. Hand noted that when the issue comes up, she will have to declare a conflict of interest because she is employed by Holmes Regional Medical Center. She added that she is excited about the goals and believes Council should work diligently with the hospital to ensure we have the best emergency and cardiac care to offer our community.

Mrs. Palmer said she hears about too many people who have to be transported out of the county to distant hospitals to receive appropriate care. She understands that the expansion plans will result in the elimination of those trips and thinks everyone in South Brevard County will benefit from the expansion.

Mr. Palmer asked the overall timeframe of all the projects. Mr. Mills said everything he has shown Council is in the five-year plan.

Mr. Contreras asked if the hospital is looking to increase the bed count. Following a brief discussion, Mr. Mills said they see no current need to expand the licensed beds (currently they have 458 in-patient beds).

Mr. Palmer asked if they have plans to add another helicopter. Mr. Mills said to his knowledge, they will retain one. He added that Council would be involved with any decision to increase that number.

Mrs. Poole expressed concern about the Shamrock Apartments (as it relates to the location of the emergency room and the impact of the helicopter operation). She discussed the Circles of Care property, the reverter clause in the deed, and noted that it once belonged to the City of Melbourne. She added that she does not want to see the building torn down.

That concluded Council's comments. No action taken.

18. COUNCIL ACTION RE: A request for approval of projects and priorities for state, federal and local funded transportation projects and county roadway system Improvements for FY 2002-2003 to 2006-2007.

From the agenda report: Each year the Florida Department of Transportation (FDOT) and the Brevard Metropolitan Planning Organization (MPO) ask the city to provide a

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proposed five-year Transportation Improvement Program (TIP). As the current year projects begin implementation, they are dropped from the list and replaced with a new fifth year project. The TIP consists of two lists - one for local (city and county) funded transportation improvements and one for state and federal funded improvements. Projects in the work program have not been included or restated. Projects where a new phase of implementation is proposed are included in the request.

City staff met to discuss what new projects, eligible for state and federal funding, should be included in the upcoming TIP and the local TIP. For the most part, the recommended list is a continuation of projects with additional phases identified in future years. Due to scheduling it is not likely that the new phase of the selected projects could be included for state or federal funding until FY 2005-2006 or later. Although projects presently not included in the work program are present, the recommendations include providing funds to implement projects that are now under study.

The list with suggested priorities is as follows:

STATE AND FEDERAL FUNDING REQUESTS FY 2002-2003 to 2006-2007

Highway Capacity

1. Design of improvements to Babcock Street based on findings of the Preliminary Design and Engineering.
2. Apollo Extension Study Area implementing recommendations for design funding.
3. Design the right-of-way for Ellis Road widening to four lanes between John Rodes Boulevard and Wickham Road.
4. Interchange Justification Report and Ellis Road extension to I-95 and westward to U. S. 192 at proposed Palm Bay Beltway.
5. John Rodes Boulevard design for widening between U. S. 192 to north of Eau Gallie Boulevard.
6. Design for the widening of Sarno Road to four lanes between Wickham Road and Eau Gallie Boulevard.
7. Corridor Study and Preliminary Design and Environmental for North Airport Connector, Wickham Road, Croton Road, and Apollo Boulevard.
8. I-95 widening to six lanes (already in work program).
9. Arterial Investment Study for improving Wickham Road from NASA Boulevard to Pineda Causeway.
10. Arterial Investment Study/Preliminary Design & Engineering for U. S. 192 (New Haven Avenue) I-95 to Babcock Street
11. Right-of-way/construction funding for six-laning of Palm Bay Road from R. J. Conlan to I-95.
12. Right-of-way acquisition for the Pineda Causeway extension from U. S. 1 to I-95.
13. Construction funding for U. S. 192 widening in Osceola County.

Traffic Operations

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1. Right-of-way/construction of the realignment of the Wickham/NASA/Ellis intersection.
2. Traffic signal/operations improvements for U.S. 1 from Sarno Road to Aurora Road.
3. Traffic signal improvements city wide.

Multi-modal

1. Amtrak Station near Melbourne International Airport.
2. Pedestrian improvements in Downtown Melbourne and Downtown Eau Gallie.
3. Construct pedway/greenway along M-1 Canal.

LOCAL FUNDED PROJECTS

Projects to be developed from local funding sources include both county and city maintained roadways. The projects proposed on the city street system include those listed in the attached 2001-2005 spreadsheet. The list has been modified slightly from last year to indicate new projects that have been implemented or not considered necessary at this time.

In addition, the city may want to request that Brevard County implement projects on the county roadway system within and in proximity to the city. The county has selected consultants to do design work on many of these projects.

1. Construct a center turn lane on Sarno Road between Wickham Road and Iroquois Avenue (in front of Jimmy Moore Park).
2. Construct intersection improvements on Croton Road at Parkway Drive and at Post Road.
3. Resurface and improve Croton Road on those segments not included in the current County widening project.
4. Provide intersection improvements at Aurora Road and Wickham Road (channelization, etc.)
5. Construct a center turn lane on Lake Washington Road west from Wickham Road to Kingsmill Avenue.
6. Prepare engineering plans and obtain necessary right-of-way to extend Turtle Mound Road from Aurora Road to Eau Gallie Boulevard.

Mr. Hill explained how the funds are divided. Mrs. Poole asked if the county can spend their portion anywhere they wish. Mr. Hill said they are under the same restrictions as the city – funds have to be spent on bonafide transportation improvements. He added that the city has done well over the last few years. We have identified and made a case for good projects that are in the city or that directly affect the city.

A brief discussion followed.

Moved by Hand/C. Palmer for approval of the proposed projects and priorities (state and federal funding requests FY 2002-2003 to 2006-2007, local funded projects FY 2002-

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2003 to 2006-2007, and county roadway system improvements) as suggested by city staff.

Mrs. Poole referenced item 6 under local funded projects and said she believes this will bring in more development. Mr. Hill said staff's opinion is that this connection will take the burden off of Wickham Road.

Mrs. Palmer referenced item 7 under state and federal projects and asked if this would be located on Airport property. Mr. Hill replied yes and added that it would be in the best interest of the Airport to provide the property without a cost.

The question was called. Motion carried unanimously.

19. FINAL PLAT AMENDMENT: (Public Hearing) A request to formally amend the plat for James Landing PUD to permit the dedication of a portion of Lot 5, Block 3 as "common property," located in the James Landing Subdivision. (Owner, applicant, and representative: James Landing Property Owners' Association, Inc.) (P&Z 5/10/2001)

From the agenda report: The James Landing Property Owners' Association, Inc. (JLPOA) is requesting the city formally amend the plat to permit the dedication of a portion of Lot 5, Block 3, as "common property". The subdivision was platted in 1988. When the subdivision was constructed, a drainage pipe was erroneously constructed mostly on Lot 5, rather than along the common lot line of Lots 5 and 6, Block 3. The owner of Lot 6 constructed a house on the lot and vacated the portion of the easement where the pipe was originally supposed to be. The owner of Lot 6 also has acquired the westerly portion of Lot 5. The vacation was approved by the city in March 1997. No structure has been built on Lot 5.

Due to the size and configuration of the remaining portion of Lot 5, it would be difficult although not impossible to construct a house on the lot. Apparently the JLPOA acquired the lot from the developer/builder and now wishes to formally create this lot as common area. The James Landing Subdivision contains several tracts as common areas, including Tracts "A" – "X". These tracts provide a variety of functions including drainage, recreation, and landscaping.

Creating this tract as a common area would not be a significant deviation from the approved plat. This dedication will create additional open space in the subdivision, which could be used for recreation purposes. This could add to the recreation facilities already located in the development. This dedication waives all development rights and conveys such rights to the city. This should not include common area uses such as recreation.

The amendment will effectively create an additional plat note that dedicates the remaining portion of Lot 5, as recorded in Official Records Book 3924/Page 0065, as common area. Since this lot will not be built upon, this represents approximately a potential loss of between \$300 and \$500 in yearly tax revenues to the city if a house were constructed on the lot and an immediate loss of an estimated \$84 in yearly ad valorem tax revenue. This is not a significant amount by itself especially since the property will require little, if any, city services.

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The Planning and Zoning Board and staff recommended approval of the plat amendment as requested.

Attorney Gougelman noted that the Property Appraiser's office would spread the tax across all homeowners in the subdivision; therefore, the city would not be losing any tax revenue.

Moved by Poole/E. Palmer for approval of the Final Plat Amendment for James Landing. Motion carried unanimously.

20. ORDINANCE NO. 2001-28 (FOC-2001-05/LDR-2001-05): (Public Hearing/First Reading) A proposed ordinance to amend Appendix D, Chapter 1, Section 1.15 of the Land Development Regulations regarding ex-parte communications for small scale amendments. (Requested by City of Melbourne) (P&Z 5/10/2001)

Attorney Gougelman read Ordinance No. 2001-28 by title.

From the agenda report: The Florida Supreme Court's recent opinion in Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 26 Fla. L. Weekly S224 (Fla. April 12, 2001) holds that small scale comprehensive plan amendments pursuant to Section 163.3187, Florida Statutes, are no longer considered to be quasi-judicial in nature. Instead, courts should consider them to be legislative in nature.

The city's *ex parte* disclosure requirements codified in Section 1.15, Appendix D, Melbourne City Code, will no longer apply to small scale Comprehensive Plan amendments. Therefore, the ordinance should be modified to delete small scale amendments as a *quasi-judicial* type of permitting proceeding.

Moved by Walker/E. Palmer for approval of Ordinance No. 2001-28. Motion carried unanimously.

21. ORDINANCE NO. 2001-29 (CPA-2001-01AD (A) & (B)): (Public Hearing/First Reading) A proposed ordinance to adopt Comprehensive Plan Amendments to define and clarify density issues related to contiguous properties under single ownership, to establish a principal for transfer of development rights, and amend 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 Joint Planning Agreement. (Requested by City of Melbourne) (P&Z 5/10/2001)

Attorney Gougelman read ordinance No. 2001-29 by title.

From the agenda report: The proposed ordinance will adopt the policy changes which will 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. It will also establish a principal of transfers of development rights which could be built into

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the land development regulations. A second amendment will amend 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 Joint Planning Agreement.

This proposal was approved for transmittal on March 26, 2001. We have received notice from the Department of Community Affairs that they will not conduct a review of the proposed changes and that the city may go ahead and adopt the changes. DCA did request two modifications to the policy to insure that the parcels are contiguous and to insure that there would be no increase of density in any coastal high hazard area. Those changes have been made.

Regarding the blending of densities, Mr. Palmer asked if two properties developing under the new guideline would have to be under one name. Mrs. Braz said the property would have to be under the same ownership or developed under one plan. Mr. Palmer asked what would happen if one property developed at a higher density and the adjacent property owner decided to sell. Mrs. Braz said there would be an agreement in place to ensure this doesn't happen. She noted that this policy has been in place; however, the change will formalize it.

Attorney Gougelman added that it will have to be a recordable document, which would be tracked by staff.

Mrs. Poole stated she believes this change will provide an advantage for developers.

Mrs. Palmer said that when this was originally presented to Council, she did not understand that the properties could be separately owned. Mrs. Braz said language can be added providing that the properties have to be under the same ownership. Attorney Gougelman cautioned against this change and stated that it would be easy to change ownership. He added that the city should regulate use, not ownership.

Mr. Palmer said he would feel better if language providing that the document will be recorded in the public record were included in the amendment.

Mrs. Hand left the Council Chamber at 10:34 p.m.

A brief discussion continued regarding the form of the agreement.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2001-29 with a revision to the section relating to density issues. The revised language will require a document to be recorded in the public records when densities are blended. Motion carried unanimously. (Six votes – Mrs. Hand was absent from the Council Chamber.)

22. COUNCIL ACTION RE: A request for consideration of proposed allocation to Brevard County of Florida Department of Community Affairs Federal Drug Control and System Improvement Program (Edward Byrne) funds totaling \$353,255 for FY 2001/2002.

Mrs. Hand returned to the Council Chamber at 10:37 p.m.

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From the agenda report: The Department of Community Affairs has available Federal Drug Control and System Improvement Program (Edward Byrne) funds totaling \$14,162,217 for FY 2001-2002. These funds are to be utilized to implement local drug control and system improvement projects designed to reduce the production, transfer and use of controlled substances, reduce the incidence of drug-related violent crime and make improvements to the criminal justice system.

Brevard County has been allocated \$353,255 of these funds for use by the Brevard County Sheriff’s Office, the Office of the Brevard County State Attorney and the Brevard County Court Alternative Services. Projects proposed by these agencies include the following:

<u>Implementing Agency</u>	<u>Proposed Project</u>	<u>Federal Dollar Allocation</u>
Brevard County Criminal Justice System	Criminal Justice Services Drug Testing Laboratory IV	\$19,255
Office of the State Attorney	Elder Service Unit II	\$40,000
Office of the State Attorney	Repeat Offender Team (ROT) IV	\$64,000
Brevard County Sheriff’s Office	Brevard County Sheriff’s Office Prisoner Transportation/Jail Booking System Improvement Program	\$230,000
	Total	\$353,255

Moved by Poole/E. Palmer to authorize the Mayor to indicate the City of Melbourne’s endorsement of the proposed projects.

In response to Mrs. Palmer, Mr. Hill will provide additional information on the Elder Service Unit II project.

The question was called. Motion carried unanimously.

23. COUNCIL ACTION RE: Discussion of solicitation or approaching motor vehicles (“bucket drops”) within City rights-of-way.

From the agenda report: At the October 10, 2000 meeting, Council asked for information regarding the practice commonly known as “bucket drops.” State Statutes strongly discourage the practice of right-of-way solicitation while allowing, under strict permitting requirements, the ability of local governments to allow the practice if they wish. Police personnel believe that any activity that mixes pedestrians with vehicles outside of a regulated environment such as a crosswalk is hazardous and should not be permitted.

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In the past, the city has allowed non-profit solicitations at the intersections of University Boulevard/Lipscomb Street and NASA Boulevard/Babcock Street by Special Activity Permit. Because of the restrictions in place in other jurisdictions, charitable organizations outside the City of Melbourne obtain permits for solicitations at these locations.

Staff believes right-of-way solicitation should be prohibited. If Council wishes, an ordinance similar to the one in the package from Satellite Beach, can be drafted.

Mr. Hill reported that additional legal research is required. Any prohibition on this activity would have to relate to safety because of free speech issues. Attorney Gougelman added that one of the problems we run into is case law dealing with people hawking newspapers at intersections. The practice was outlawed in areas; however, a suit filed in federal court resulted in the activity being protected under the First Amendment.

Mrs. Palmer referenced the Satellite Beach ordinance and asked that we follow those guidelines (prohibiting soliciting as opposed to the distribution of handbills).

Attorney Gougelman cautioned that Council should not assume that Satellite Beach's ordinance is constitutional.

Moved by Poole/Hand to direct staff to return with a proposed ordinance to prohibit "bucket drops."

Mrs. Poole stated that she is concerned about the safety of the children who are soliciting. They enter the intersection from every direction; it is dangerous.

Mrs. Palmer recommended that staff simply stop issuing permits. Mr. Hill said we really need a clear prohibition. Mayor Buckley recommended that the activity be restricted to adults and Melbourne residents.

The question was called. Motion carried. Mayor Buckley voted nay.

Mayor Buckley said he has concerns regarding the constitutionality of this action. He added that for many groups, this is their only source of fundraising.

24. COUNCIL ACTION RE: Appointment of two regular members to the Building and Construction Advisory Committee.

Moved by E. Palmer/Hand to reappoint Noel Droor. Motion carried unanimously.
(5/27/2001 – 5/26/2004)

Moved by Hand/C. Palmer to appoint Scott Lamb as a regular member. Motion carried unanimously. (5/27/2001 – 5/26/2004)

25. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Vice Mayor Palmer reported that she has been contacted by two residents regarding

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problems with dogs (one barking all night and one dangerous dog running loose). The residents were informed by the Police Department that they needed to contact Brevard County Animal Control. Mrs. Palmer was concerned that there was no offer of assistance by the police officers.

Mr. Hill said staff is aware of the difficulties we experience with Animal Control; therefore, we should be making some type of attempt to intercede on behalf of the resident. He noted that he will investigate and take steps to ensure that employees are aware of what actions we should be taking.

Regarding the Downtown Melbourne rezoning item, Council Member Poole asked that the ordinance, specifically page three, be sent to the property owners. Mayor Buckley said he is not sure they would understand the document.

Following a brief discussion about the Fire Station Feasibility Study, Council agreed to conduct a workshop meeting on June 5 at 7:30 p.m.

Attorney Gougelman updated Council on the Palm Bay Water and Sewer Reserve Area litigation. Since we have not been able to reach an agreement with the parties, the suit has been scheduled for trial during the two-week period beginning August 13.

26. ADJOURNMENT

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

The meeting adjourned at 11:07 p.m.

City Clerk – 6/4/2001

Approved by Council: _____