

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

A regular meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 7:30 p.m. by Mayor John A. Buckley.

1. Council Member Grace Walker 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
	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

Absent: Loretta Isenberg-Hand Council Member, District 6 (out of town)

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented a proclamation to Peggy Braz in recognition of 25 years of service with the city.

The Mayor presented a special Humanitarian Award to Lea Grayson, a Melbourne resident for over 51 years, who has made significant contributions to the community.

Additionally, Mayor Buckley presented the May Beautification Award to Dottie Graves, Chairman, Board of Trustees, and Charles Castor, gardener, First United Methodist Church.

5. APPROVAL OF MINUTES - June 5 2001 and June 12, 2001

Moved by Poole/Contreras for approval of the June 5 and June 12 minutes. Motion carried unanimously.

6. CITY MANAGER'S REPORT

Mr. Hill referenced the material provided by Planning and Zoning and the City Attorney regarding the county landfill. He asked Council to review the information and contact him with questions.

Mayor Buckley announced that Beryl Niedermeyer, former City Clerk of Eau Gallie and City

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Clerk of Melbourne after the merger, died on Sunday.

Additionally, the Mayor reported that Police Officer Larry Simpson took his own life on Saturday. The viewing will be June 29 and the funeral will be held on June 30, 1:00 p.m., Melbourne Auditorium.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. COUNCIL ACTION RE: Discussion of additional homestead exemption for low income senior citizens. (Postponed by Council 3/26/2001)

Mr. Hill reviewed the agenda report. Council postponed action on this item until after June 1 to determine the actual number of residents who qualify for the additional exemption. Initially, 3,647 Melbourne residents were identified by the county as being potentially eligible for this exemption. Depending on the actual number qualifying for the exemption, it could have a negligible effect on the city's tax rate or as much as a 4% increase could be required to offset the exemption.

The city has requested data from the county to determine the actual number of applicants who requested and received the additional senior homestead. The information was expected immediately after June 1; however, the county is still sorting the data and will provide this information as soon as possible.

The recommendation is to postpone action on this issue until the data is available from Brevard County.

Moved by C. Palmer/Walker to postpone this item until the data is received from Brevard County. Motion carried unanimously.

9. ORDINANCE NO. 2001-29 (CPA-2001-01AD (A) & (B)): (Public Hearing/Second Reading) A proposed ordinance to adopt Comprehensive Plan Amendments to clarify density issues related to property north of Lake Washington Road and east of Stewart Road and to 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) (First Reading 6/12/2001)

Attorney Gougelman read Ordinance No. 2001-29 by title. There were no comments from the public.

Moved by Poole/E. Palmer for approval of Ordinance No. 2001-29. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2001-31: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 5, Animals, as recommended by the City Code Review Committee, Section 3. (First Reading 6/12/2001)

Mr. Gougelman read the ordinance by title. There were no comments from the public.

Moved by Contreras/Walker for approval of Ordinance No. 2001-31. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2001-32: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 18, Leisure Services, as approved by the City Code Review Committee, Section 4. (First Reading 6/12/2001)

The attorney read Ordinance No. 2001-32 by title. There were no comments from the public.

Moved by E. Palmer/Poole for approval of Ordinance No. 2001-32. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Consent Agenda

Moved by E. Palmer/C. Palmer for approval of items “a” through “e” as recommended.
Motion carried unanimously.

The consent agenda was approved as follows:

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- a. Contract for 60-month lease of a Toshiba DP2570 Copier and a Toshiba SD330 Digital Duplicator for the Leisure Services Department, Copyco, Deerfield Beach, Florida - \$5,628 per year for a total five-year cost of \$28,140.
 - b. Supplement No. 75 to continuing consultant's contract for Babcock Street Median Design, Project No. E00611, Frazier Engineering, Inc., Melbourne, Florida - \$18,300.
 - c. Contract for engineering design of a waterline extension at Timberline Estates, Frazier Engineering, Inc., Melbourne, Florida - \$11,400.
 - d. Contract for renovations of Fire Stations #71 and #72, Tim Williams Builders, St. Cloud, Florida - \$17,663.90.
 - e. Purchase of eight Panasonic Toughbook 48 Model Number CF48P4FCUEM Laptop Computers (\$2,454 each) for the Police Department, Comark, Inc., Lake Wales, Florida - \$19,632.
13. ORDINANCE NO. 2001-33: (First Reading) A proposed ordinance to amend Chapter 25, Signs and Advertising, as recommended by the Code Review Committee, Section 1.

Mr. Gougelman read the ordinance by title.

Moved by Walker/Contreras for approval of Ordinance No. 2001-33.

Mrs. Poole asked for additional information regarding the change to Section 25-9, temporary signs. Dan Porsi, Senior Code Enforcement Officer, explained that city staff ensures temporary signs meet the requirements; however, permits are not issued. This change in the Code will reflect the actual practice.

Mrs. Poole referenced the decrease in maximum size of signs to 72 s.f. She asked if the size had been 64 s.f. Mr. Porsi explained that this change will bring all signs in line with our scenic corridor requirements. Currently, in areas other than scenic corridors, signs can be as large as 150 s.f.

Mr. Palmer referenced the increase in political sign deposits (\$50 to \$150) and asked if all candidates, including those from other cities, will have to comply. Mr. Porsi clarified that the Code does not differentiate between candidates; all candidates will be required to pay the increased bond. Mr. Porsi added that currently, many candidates opt to lose the \$50 in order to have the city remove the signs. The Code Review Committee felt that an increase would provide incentive for the candidates to remove their own signs.

The question was called. Motion carried unanimously.

14. COUNCIL ACTION RE: (Public Hearing) Request for approval of financial assistance for nonprofit organizations for FY 2001-2002.

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Mr. Hill briefed Council. In order to provide for consistency and allow for all requests to be considered at the same time, Council approved a policy (Resolution No. 1679) for the approval of “grant” financial assistance applications for the 2001/2002 budget year for non-profit organizations.

Management Services provided information about Council’s policy to the agencies and indicated that Council would be considering the items at one time in advance of the proposed budget being presented. Council will need to determine the total amount to be funded and the individual grants to be made.

An annual cap of \$100,000 was set in the policy, however the policy provided flexibility for Council to determine if less or more was to be provided.

Staff received 13 financial proposals totaling \$171,095. A copy of each request was previously distributed to Council.

Joe Mullins, President, Honor America, Inc., discussed the patriotic events organized by Honor America, including Loyalty Day, Flag Day, Fourth of July Parade, etc. Additionally, Honor America operates the Liberty Bell Museum, which is free to the public. Over 5,000 young people visit the museum each year and receive an educational, hands-on experience. He confirmed that the amount they are requesting (\$11,072), is the same amount the organization received last year. He encouraged Council to support the request.

Joann Torpey, representing the Phoenix Theatre, explained that they are requesting funding (\$20,000) for the production of the musical, “Gypsy”. She added that this is the first time they have asked for funding. The musical will be presented at the Henegar Center for the Arts. Ms. Torpey elaborated on the production and the hours of community service involved. She concluded by asking for Council’s support and consideration of the grant request.

In response to Mrs. Walker, Ms. Torpey said that tickets for shows cost between \$15 and \$20.

Sheila Stewart-Leach, Brevard Museum of Art and Science, discussed her request (\$25,000). She noted that over 50% of their members are from Melbourne. The museum provides on-going services every day. They would like to expand their Art in the Park program and have a program one day each week that is free to Melbourne residents.

In response to Mrs. Poole, Ms. Stewart-Leach explained that the museum charges for some programs. Recently, they started charging for materials. Mrs. Poole questioned whether the museum will be moving to the Viera area. Ms. Stewart-Leach replied that they are conducting a feasibility study, which will include site locations. One option is to relocate to another section of old Eau Gallie. A brief discussion followed.

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Mayor Buckley said he is inclined to postpone action on this item since only three people are present to speak. He added that he needs additional information from several organizations that requested funding.

A brief discussion followed about the date of postponement and the Mayor said he would like this to appear on the July 24 agenda.

Mr. Hill said staff needs direction on an amount to include in the preliminary 2001-2002 budget. By consensus, Council agreed that \$100,000 should be listed in the budget.

Mr. Palmer pointed out that there are organizations represented in the audience; however, the representatives did not sign up to speak. Mr. Contreras said he feels that the people who requested grant dollars should have attended in order to make a presentation. Mayor Buckley said the item is not a public hearing. Mr. Hill pointed out that each organization was contacted and advised to attend.

Moved by Buckley/E. Palmer to postpone action on this item until July 24. Motion carried. (Council Members Contreras and Poole voted nay.)

15. COUNCIL ACTION RE: Request for approval of SHIP Award in excess of \$30,000 for rehabilitation project at 1949 Jefferson Avenue.

From the agenda report: On September 12, 2000, Council authorized maximum expenditures of \$30,000 for the rehabilitation of the home of Larry and Becky McCormack, located at 1949 Jefferson Avenue. Staff requested the higher limit to cover anticipated temporary relocation and additional repair costs. The rehabilitation project was very difficult and plagued with unforeseen problems.

The homeowners did as much as they could themselves and did not relocate in order to reduce costs. Project costs totaled \$35,252.11 including the homeowners' contribution of \$2,500. The total SHIP expenditures exceeded the \$30,000 limit authorized by Council by \$2,752.11.

Staff secured the approval of the Florida Housing Finance Corporation for the amount spent in excess of the limit established in the 1998-2001 SHIP Plan, subject to Council approval of the overage.

Moved by Poole/Contreras for approval of a total SHIP award of \$32,762.11 for the McCormack rehabilitation project.

Mrs. Poole commended the homeowners for doing everything possible to reduce the costs.

Mrs. Palmer asked the value of the home. Mr. Hill said he will check; however, it is probably \$60,000 based on the neighborhood. He confirmed for Mrs. Palmer that this is the end of the project.

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The question was called. Motion carried unanimously.

16. COUNCIL ACTION RE (PR-2001-01): (Public Hearing) A request to construct a parking lot for Melbourne Discount Beverage in an R-1A (Single-Family Residential) district, located on the south side of Kingston Lane, east of Wickham Road. (Owner, applicant, and representative: Mahendra Patel and Elbert McGinnis) (P&Z 6/14/2001)

Mrs. Braz briefed Council. The .40-acre property was originally platted and zoned for development of single-family residences. Over the years, the properties located east and west of this lot have been zoned for commercial uses.

The subject lot has an adopted land use of mixed use Commercial/Low Density Residential according to the Comprehensive Plan Future Land Use Map. The owner of the subject property also owns the lot zoned C-2 to the west where he operates a retail store. The vacant lot to the east of the subject property is also zoned C-2. The property to the south is zoned R-1A and contains a single-family home.

The City Code provides that Council may consider approval of parking lots in residential zones if seven performance standards are met. The site plan consists of a survey with the proposed Code complying improvements drawn on the survey. The one exception is that the front landscape setback does not match the required building setbacks specified in the Code. This provision can be waived by Council. Since the properties on both sides of the subject property are, or can be, constructed with the standard 10-foot front landscape buffer, it would be reasonable to apply that standard to this lot. The lot contains five parking spaces and a dumpster pad.

The owner is in the process of making improvements to the parking area. The lot is now used for parking for the retail business but does not comply with the standards in the Code including the requirements to obtain approval from the Council. The improvements include extending the sidewalk along the front of the site.

The plan indicates that access will be through the existing lot on the commercially zoned portion of the property to Kingston Lane. Since much of the site is now paved, additional retention will probably not be required. A dumpster will be placed at the rear of the parking lot in the center of the property. An opaque fence must be constructed along the south property boundary of the site and landscaped per Code.

The resident to the south supported the request at the Planning and Zoning Board meeting and indicated he would like access through a gate to get to the retail store.

The Planning and Zoning Board and staff recommended approval of PR-2001-01, with the findings listed in the agenda package and the following conditions:

- a. The parking lot shall be constructed substantially consistent with the one-page survey prepared by Eric Nielson of Cocoa, Florida, dated 10-11-2000 and with

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marked parking lot improvements.

- b. The applicant must provide a six-foot high opaque fence along the south property line.

Additionally, approval by Council of the request will result in authorization of a parking setback of 10 feet from the Kingston Lane right-of-way in order to provide conformity with the parking lot setbacks applicable to the properties both east and west of and adjacent to the site.

Based on the neighbor's comments at the Planning and Zoning Board meeting, staff is recommending stipulation "b" be reworded to read, "The applicant shall work with the neighbor to the south to provide screening along the south property line."

Moved by C. Palmer/E. Palmer for approval of PR-2001-01 subject to condition "a" and revised condition "b" (and authorization of a parking setback of 10' from the Kingston Lane right-of-way). Motion carried unanimously.

17. SITE PLAN APPROVAL (SP-2001-03): (Public Hearing) A request for site plan approval for an apartment complex (student housing) and a parking garage/lot on a 10.22-acre portion of the Florida Tech campus, zoned I-1 (Institutional), located west of Babcock Street, south of Ruffner Road and east of Country Club Road. (Owner, applicant, and representative: Florida Institute of Technology/University Housing Services, Inc./Mike Hambelton) (P&Z 6/14/2001)

Mrs. Poole questioned whether the disclosures should be given prior to Mrs. Braz making her presentation. Attorney Gougelman said that is optional; however, it is important that disclosures be made before anyone for or against the item speaks so the applicants have a chance to rebut.

Mrs. Braz reviewed the agenda report. The property has been part of the Florida Tech campus for many years. The property has never been developed. Crane Creek, which flows through the property, has been dredged in recent years.

The property has an adopted future land use designation of Public Lands and Institutions and is zoned I-1 (Institutional). The property on the north shore of Crane Creek is undeveloped and consists of a heavily wooded tract with many hardwood trees intermixed with palms and saw palmetto. The southerly portion of the site is mostly cleared and is used as a yard and unpaved parking lot. The Crane Creek drainage canal bisects the site and is a primary floodway for the central portion of Melbourne. Portions of the property on either side of the channel are located within a FEMA designated floodway and special flood hazard area flood zone.

The property to the north of the site consists of single-family homes in the Hickory Hills Subdivision. Babcock Street forms the eastern border and other parts of the developed Florida Tech campus form the westerly and southern boundary. The Hickory Hills

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subdivision is zoned R-1AA (Single-Family Residential).

The Comprehensive Plan, Future Land Use Element, Objective 6c, requires special design/use restrictions for commercial facilities developing adjacent to residentially zoned or developed properties.

Objective 6c.

Create effective buffers to protect new and established residential areas adjacent to new and established nonresidential uses through standards in land development regulations. New commercial, high-density residential, and institutional land uses, requiring formal site plan approval, developing on over one acre with drive aisles, parking, delivery or loading areas, or dumpster pads adjacent to established single-family neighborhoods should provide a buffer of no less than one-half of the average depth of the abutting residential lots. A structural or opaque vegetative and sound buffer should be provided. Buffer areas should be increased if adjacent development is greater than one story. This shall not be required in redevelopment districts.

Florida Tech proposes to develop 84 dormitory units in seven, three-story dormitory buildings each containing 12 units. All units will contain four bedrooms. The project would be developed in two phases. Phase one will consist of four buildings (48 units) to be constructed on the south side of a service driveway extending from the south end of Ruffner Road/Babcock Street and backing onto Crane Creek. The three, phase two buildings (36 units) will be built in the center of and north of the service drive. These buildings would be setback into the wooded tract at least 55 feet from the south lot lines of the Hickory Hills Subdivision as required by Code (Appendix B, Article XII, Section 16 (A)(5)(d)). A small common building with vending, laundry, etc. would be built southwest of the first phase dormitory.

By retaining much of the vegetation on the site, the dormitories will be sufficiently buffered from the existing residences. The plan also provides for the construction of a fence along the north property line. A two level parking garage and additional surface lot would be constructed on the south side of the creek in the location of a yard adjacent to an existing dormitory (Roberts Hall) and on the site of the unpaved lot. These parking improvements would provide parking for 173 vehicles. The parking lot will also be constructed in two phases. A second story parking deck will be added when the three, phase two units are constructed. This exceeds the 168 parking spaces required by Code. As required by Code, handicapped parking for the dormitories will be provided along the service driveway adjacent to the dorms. A walkway, similar to the walkway that extends from the library to the parking lots adjacent to Babcock Street, will provide a connection to the dorms from the larger part of the campus. A retention basin will provide stormwater treatment in a linear basin parallel to the creek.

Motor vehicle access is proposed with a primary driveway connection to Babcock Street. Florida Tech is still conferring with the Florida Department of Transportation (FDOT) on permitting this driveway as a limited use driveway. This driveway will be used for limited

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purposes including loading (moving in and out of the dormitories, deliveries, garbage pick-up, emergency service, and maintenance). This driveway will not contain parking spaces for the dorms, with the exception of the Code-required handicapped spaces, and would be gated to limit or control access by unauthorized users. The Planning and Zoning Board recommended that there be no access from Ruffner Road.

If not developed as part of the institution (campus related) use, the property may or could be developed as a single-family subdivision or developed as some other institutional use such as a church. The proposed use with limited use driveway will be a less intensive use of the property other than remaining vacant. For comparison purposes, an estimated 13 single-family lots could be platted in the five-acre area north of the creek. The lot sizes could match that of the adjacent Hickory Hills Subdivision. If 13 single-family homes were constructed it is likely that Ruffner Road would be extended at its existing terminus. The 13 single-family homes would generate an average of 124 trips per day. A five-acre church site would generate significantly more trips than either a single-family subdivision or the proposed use. The existing student dormitory design, with gated and limited use, would generate significantly less than 124 daily trips with the exception of days when the gate would be opened for residents to move in and out before and after each semester. Also, if a single-family subdivision were built on the property there would be no buffer requirement; the site could be substantially cleared and access to Ruffner Road would be required.

In 1994 Florida Tech presented a proposed master campus plan to the city. The plan was presented in several phases indicating the ultimate build-out of the campus. The area currently proposed for the dormitories was originally intended to become the maintenance facility and aquaculture facility for the campus. These facilities were constructed elsewhere on the campus. The five-phase master plan was never adopted as part of a proposed development agreement, however, the first phase of the plan, which did not include the maintenance and aquaculture facility on this site, was approved as part of a rezoning of the southern portion of the campus. The formerly proposed master plan indicated a connection to Ruffner Road and bridge across Crane Creek.

The site will be sparingly cleared and filled when construction begins. An Environmental Impact Assessment (EIA) was performed, which indicates that no threatened or endangered species use the property. A total of 609 hardwood and palm trees greater than four inches in diameter were located on the five acres north of the creek. The plan will impact 207 or 34% of these trees. Most of the larger trees will be preserved as well as a significant amount of the smaller trees and palmetto understory.

Florida Tech held a meeting with neighbors to present their proposal. The Hickory Hills residents were opposed to any connection to Ruffner Road and concerned about construction vehicle access and noise and flooding impacts. These are addressed in the Florida Tech response and are incorporated into the site plan design.

A number of residents spoke in opposition to the site plan at the Planning and Zoning Board hearing, citing concerns regarding the environment, noise, traffic and access. A

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statement of opposition as posted on the internet was received from students and others objecting to the use of the “jungle” and botanical gardens for dormitory use. A copy was separately provided to Council. However, the site proposed for this development is not part of the “jungle” or the botanical gardens.

The site plan complies with the City’s Comprehensive Plan policies and land development regulations, including the Zoning Code and Vegetation Code.

The Planning and Zoning Board and staff recommended approval of SP-2001-03, in accordance with the site plan prepared by Frazier Engineering, Inc. of Melbourne, Florida, consisting of a one-sheet plan with Project No. 0111 dated May 2001, with the findings listed in the 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: 1) a decrease by ten percent in the amount of open space or vegetative areas on site; 2) an increase by more than ten percent in the size of the buildings as part of this plan approval; or 3) a proposal to allow for fully operating driveway connection to Babcock Street without gated/controlled access.
- b. Provide a six-foot high iron fence, or wall along the north property boundary adjacent to the Hickory Hills Subdivision lots.
- c. If no permit can be obtained from FDOT for Babcock Street, access shall be obtained from Country Club Road.
- d. The 55-foot undisturbed buffer along the north property line shall be preserved except for access to Babcock Street and the dormitory buildings shall set back from the north property line a minimum of 70 feet.

Mrs. Poole asked what type of fence is proposed. Mrs. Braz said she is not sure; however, it would have to be opaque. Mrs. Walker asked for information regarding the date of the EIA. She added that depending on the date of the study, threatened or endangered species could vary. Mrs. Braz assured Mrs. Walker that the person conducting the study checked for creatures plus any habitat.

Mr. Palmer asked for additional information on the apartment, whether the parking lot will be grassed or dirt, how the proposed 173 parking spaces relates to the Code, and how the retention lakes will be interconnected.

Mrs. Braz noted that the applicant is present to discuss the configuration of the apartments and the retention areas. She added that the site has not been engineered

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yet. Additionally, she noted that a two-story parking garage is planned. The Mayor pointed out that they are providing 173 spaces and the Code requires 168.

In response to Mrs. Poole, Mrs. Braz said the units will not have kitchens; the students will eat in a common dining area.

Mr. Contreras asked about no access from Ruffner Road. Mrs. Braz said they had planned Ruffner Road as limited access; however, following opposition from Hickory Hills residents, the applicant decided to approach FDOT about limited access from Babcock Street. At this point, they have not received approval from FDOT.

Mrs. Walker said the plan depicts apartments, yet the units do not have kitchens. Mrs. Braz explained that there are dining halls on campus. She noted that the applicant is present and able to address that question.

Mrs. Poole asked if there is a difference in the requirements for dormitory parking and apartment parking. Mrs. Braz said the applicant was required to meet the dormitory requirements. She added that she believes they are more stringent than apartment requirements.

Mrs. Poole stated that 173 parking spaces do not seem sufficient for 336 students. Mrs. Braz said she is not sure that most college students have their own car.

Mrs. Palmer said the canal is part of the main drainage system for this area. It is also located on a 100 year flood line. She asked if anyone has conducted a study to determine the impact of drainage for this property along with property located up the creek.

Mrs. Braz stated that the applicants would have to obtain approval from St. Johns River Water Management District and meet city requirements. She added that she believes the city's requirements are stricter. The applicant will not be allowed to have more runoff at post development than what occurred pre-development. Again, she noted that they have not done the engineering on the site. Mr. Hill added that a pedestrian or vehicle bridge across Crane Creek would require approval from Brevard County.

Mayor Buckley asked for disclosures.

Mr. Contreras stated that on June 24 he spoke with John Wilt regarding the noise readings and baffling of the air conditioning units (on top of the new science building).

Mrs. Poole stated she spoke with John Wilt, Country Club Road, and the following residents of Hickory Hills Subdivision and Ruffner Road about their concerns and the impact the Florida Tech dormitories will have on the area: Grace Berg, George Maxwell, Johnise Sapundjieff, Olan Johnson, and Linda Beers. Also, she spoke with Amanda Burns and Bill Jurgens of Florida Tech.

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Continuing, Mrs. Poole referenced the Planning and Zoning Board meeting where Mike Hambleton and Stewart Aiken represented Florida Tech. Both were concerned that the kitchen area only had a sink. A member of the Planning and Zoning Board asked if these units could be considered apartments or dormitories in the number of required parking spaces and if a microwave and compact refrigerator could be used. Mrs. Poole said she questioned 173 parking spaces for 336 students.

Mrs. Poole stated that she spoke with Jim Eagan of the Marine Resources Council about the Environmental Impact Assessment. She added that a resident of the Hickory Hills Subdivision said he spoke with the SJRWMD and was told that Florida Tech had not contacted them for approval. Mrs. Poole elaborated on the discussion the resident had with SJRWMD.

Council Member Contreras called a point of order based on the amount of discussion included in Mrs. Poole's disclosure. Attorney Gougelman said the disclosure law requires Council to indicate who they spoke with and anything material from that discussion that might influence a decision whether to approve or deny. For example, if a resident said that every time it rains the entire area goes under water, that would be considered material.

Mrs. Poole continued and stated that she has not spoken with Florida Today nor has she telegraphed or expressed a position with regard to whether this site plan should be granted or denied before the close of the City Council public hearing.

Mayor Buckley said Mrs. Poole is being less than candid – the Planning and Zoning Board minutes indicate that she opposed the project and that is not being quasi-judicial. He added that it is unethical and illegal for Mrs. Poole to have taken a position. Mrs. Poole said the minutes are not right; she did not say that she is opposed to the project. Mayor Buckley replied that if she is going to attend the Planning and Zoning Board meetings, then she should be quiet. However, if she is going to speak, then she should resign from Council. Mrs. Poole stated that as a citizen of Melbourne she has the right to attend. She added that if she has information that members are not aware of, then she has a First Amendment right to speak. A brief discussion continued.

Mayor Buckley said he talked to Jim DeSantis three or four weeks ago (representing Florida Tech) and he said they were going to make a presentation to the local residents. The Mayor said he asked Mr. DeSantis to provide Council with any information that is provided to the residents. The Mayor said he also received an e-mail from Ms. Cummings who is opposed and he spoke on the phone with John Wilt. Mr. Wilt is opposed to the project; however, he indicated that if it proceeds, then there should be stringent stipulations.

Mrs. Walker said she spoke to Johnise Sapundjieff who is concerned about the impact the project will have on the neighborhood. Also, she spoke with John Wilt who is concerned about whether Florida Tech is a good neighbor. Mr. Wilt has a problem with a

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Florida Tech building on Country Club Road. She noted that she spoke with Mitch Needelman who is concerned about drainage and she visited the site.

Ken Crooks, attorney representing Florida Tech, stressed that this is not a rezoning matter – it is a site plan approval process. As a result, specified criteria is set forth in the Code. If the plan complies with the criteria, then the application should be approved. He noted that staff initially recommended approval with conditions; however, at the Planning and Zoning Board meeting, several conditions were added/changed. The Planning and Zoning Board made the changes after the public hearing closed.

Mr. Crooks said the first change he is concerned about relates to increasing the 55' buffer along the north property line to 70'. He said he does not believe there is a legal basis for increasing the setback. The Code provides criteria for expanding the setback; however, this plan does not meet the additional criteria. Further, if the buildings are moved as a result of the increased setback, they would impact the area that has large, mature trees. This was not the intent of the project.

The second issue relates to the condition prohibiting access to Ruffner Road. They have filed an application with FDOT for use of Babcock Street. However, they are concerned about their options if they do not receive approval. He added that use of Country Club Road is not a viable option; it would require motor vehicle access across the creek and would cost a significant amount of money.

Mr. Crooks explained that his experts will discuss the layout of the buildings and the issue regarding kitchens. He noted that he does not know where the stipulation came from regarding the iron fence. His understanding was that the fence was to be opaque.

Mr. Crooks requested that the record include the application, all reports, the tree survey, the Planning and Zoning Board minutes, the letter from Dr. Weaver, the City Manager's Report, and any other documents submitted by individuals regarding this item.

Mike Hambleton, representing the applicant, stated that Florida Tech hired him to analyze the housing, devise a plan to bring housing up to modern standards, and address the future needs. He noted that he has been retained as a professional in that capacity. Mr. Hambleton explained that Florida Tech has a need for more housing. Many students camp out for a position in line to sign up for housing. The need is not driven by an explosive population growth; rather, it is a desire of students to live on campus.

Mr. Hambleton explained that the proposed project will be apartment style housing. Each unit will have a kitchen or kitchenette; there will be cooking facilities in each unit. The first four buildings will have 192 beds (each building containing 12 units and four beds per unit). They are residential scale apartment buildings – about the size of a large ranch home in terms of elevation. He noted that it will not be a typical “destruction of land.” They are trying to achieve a colony in the woods with limited vehicular access.

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Continuing, Mr. Hambleton stated that Crane Creek was selected as the site for many reasons. It makes the most sense from a master planning standpoint. All amenities related to on campus housing are located near this site and this site is proposed for upper classmen.

Mr. Hambleton reviewed a power point presentation and displayed pictures of the site. He stated that it is unrealistic to expect that the property will never be developed. The zoning allows institutional uses and it is not a matter of if or when, but what will be developed. He pointed out that they looked at other potential uses, which would be more destructive than the proposed use. They include a maintenance building with large yards, parking, etc.

Mr. Hambleton concluded by explaining that they would like to cross Crane Creek with a pedestrian bridge. He noted that they meet all of the city's regulations and asked for consideration of the request.

Stewart Aiken, architect representing Florida Tech, displayed a tree survey and noted that there are over 700 trees on site. He said he understands the neighbors' opposition; anyone with a beautiful environment next to them hopes that it will stay that way forever. He stressed that it is the right of the school to develop this site. He discussed the structures and noted that the seven buildings will be identical in elevation. Buildings one through four are proposed for the first phase. Phasing will result in far more than a 55' buffer in the beginning. And, they do not know when the demand will necessitate the construction of the additional three buildings. The parking structure proposed for the west side of Crane Creek is on-grade parking with 110 spaces to accommodate the first four buildings. When the additional buildings are built, a second story will be added to the parking structure.

Regarding access, Mr. Aiken said the limited access to the five-acre parcel on the north side will be for service, emergency vehicles, handicapped residents, dumpsters, and loading/unloading. Limited access from Babcock Street is being presented to FDOT. He noted that they are proposing that 70% of the trees on site be preserved; that is why parking is being proposed on the other side of the creek. He stressed that they are 100% in compliance with all Codes; they are not asking for special consideration or variances. Additionally, the 55' setback is per Code. And, that is not required to be an undisturbed buffer. He noted that at the Planning and Zoning Board meeting, a member proposed to increase the buffer to 70'.

Mr. Aiken expressed concern with the change in buffer and said shifting the construction on the site would impact mature trees. All the large specimen trees are being preserved in the current plan. They have been directed by the President of Florida Tech to under-develop the site. He added that they have met openly and honestly with the neighbors. This is not the first site plan presented. Since the first plan, they have saved 100 additional trees and are looking into access from Babcock Street. However, the school would like to retain the right of access by way of Ruffner Road if this is denied by FDOT.

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Mr. Aiken reported that the residents are in discord regarding their position. He added that residents have expressed concern regarding noise. He stressed that the air conditioner units will be located on the ground and will not be the type of units and chillers required for a 100,000 s.f. facility. The units can be screened with vegetation or a wooden fence. Additionally, the lighting will not be obtrusive. The concern was also raised about rowdy students. He pointed out that the housing is proposed for upper classmen.

Mr. Aiken said that each unit will be 1,078 s.f. and each building 118' long and 35' tall. The multi-purpose building will have laundry facilities, a staff person, and residential advisors.

Regarding the environment, Mr. Aiken said they are not touching or impacting Crane Creek or the wetlands. They have walked the site with SJRWMD. The EIA report shows no endangered or threatened species on site.

Mr. Aiken presented a photograph, which depicts a disturbed area on the site. He reported that a soil engineer hired to take soil borings entered the site without authorization. The soil engineer was knocking down palmettos with a bulldozer. The activity was stopped as soon as the school became aware and the firm was fired. He noted that his company accepts total responsibility.

Mrs. Walker asked for additional information regarding the units. Mr. Aiken said the only difference between an apartment and one of these units is that an apartment normally has a master bedroom with a secondary bedroom. Each bedroom in these units will be the same size. Each unit will be 1,078 s.f. with four bedrooms. Additionally, each unit will have a kitchen.

Mr. Contreras asked the height of the apartments in relation to the height of the northern buffer zone. Mr. Aiken said each building will be 35' tall. He displayed a photograph indicating that trees in the northern boundary are in excess of that height. They have 16", 18", and 20" palms and oaks.

Mrs. Poole asked who from SJRWMD walked the site. Following a brief discussion, Mr. Hambleton said they will follow up with a written response.

Mrs. Poole asked if access from Babcock Street would result in the 55' buffer being encroached. Mr. Aiken said yes, it would be slight. The driveway width would be 24' and there would be about 5' of encroachment into a backup (or turnaround) area.

Mrs. Poole asked specific questions about the interior of each unit. Mr. Aiken advised that each unit would be totally furnished with single size beds. The kitchens would have a sink, refrigerator, and cooking element. There would be a microwave in addition to a burner, rather than a full size range. Mrs. Poole asked the specifics of the appliances. Mr. Aiken said this item is for site plan approval. They have not yet determined the model of the appliances.

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Mrs. Poole asked if a concrete block fence would be constructed. Mr. Aiken said the University does not want to waste money on a concrete block structure when a wood fence would provide the same security.

A brief discussion followed regarding the amount of tuition charged by Florida Tech.

Mrs. Palmer discussed the buffer area and said she is trying to visualize the impact. The neighbors have expressed concern about people on the third story being able to look down into the neighbors' backyards. Mr. Aiken discussed the density of the trees and stressed that the third story would not "overlook the neighbors."

Mr. Palmer asked for an explanation of the turnaround that would encroach into the buffer. Mr. Aiken displayed the area on the map and explained.

Mr. Palmer asked how the interlocking of the ponds would be accomplished. Mr. Aiken replied that the engineering has not been performed at this stage. The concept is that as the site falls from the north down to the creek, holding areas will be located at the low area.

Mrs. Poole asked how construction vehicles would access the site. Mr. Aiken said through Babcock. If that is not approved, then through Ruffner. If that is not allowed, then the item would probably end in a lawsuit.

A brief discussion followed regarding the commons building and the function of the residential advisor. Mr. Aiken confirmed that students act as residential advisors. This is typical in most colleges. Also, there will be a resident director in the commons building.

Recessed: 9:43 p.m.
Reconvened: 9:53 p.m.

In response to an earlier question, Mayor Buckley stated that BKI, Inc. performed the Environmental Impact Assessment study on May 14, 2001.

Travis Proctor, 1427 Aurora Road, President of Artemis International Technologies, spoke in support of Florida Tech's request. As an alumnus of the school, he stated that it is exciting to see growth and expansion at the school. Mr. Proctor discussed the role Florida Tech plays in providing skilled workers for our area's high tech firms.

Ken Revay, 312 Palm Court, President of the Florida Tech Alumni Association, stated that students have an economic impact; they support merchants and other facilities. He noted that the Alumni Association strongly supports approval of the site plan. The plan will improve the student housing and quality of life for students who attend Florida Tech.

Mrs. Poole asked Mr. Revay if he is speaking for himself or the association. Mr. Revay said for himself, although he has strong support from the board.

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William Potter, member of the Florida Tech Board of Trustees, stated that he has been a member since 1981. He noted that this plan does not involve putting more students on campus. When discussing growth, the board of trustees made a decision to grow qualitatively rather than quantitatively. This plan will increase the quality of facilities, the faculty, and the students. He noted that the student population is smaller today than when he joined the board. Their objective is to create the best, private technological university in the world. He added that the greatest challenge in attracting better students is the availability of housing. The school has to have the ability to house most of the students on campus. He concluded by saying this project complies with all applicable laws. He implored Council to comply with the law and approve the project.

Dale Dettmer, 304 S. Harbor City Boulevard, attorney and graduate of Florida Tech, stated that he serves on the Board of Trustees. He encouraged Council to approve the site plan and stated that Florida Tech has complied with all city requirements. This is an important project for the school and along with recent developments, will enable Florida Tech to compete effectively for students.

Laura Beers, 20 W. Rosevere Way, stated that she lives in the Hickory Hills Subdivision located north of Florida Tech. The residents want Council to deny the site plan so that the natural hammock will be left alone. She added that the woods protect the animals, the trees provide oxygen, and act as a noise buffer. If the dorms are allowed, the aesthetics would be ruined by the view of a three-story building. She asked why two-story buildings weren't proposed and said that she is concerned about the lighting and its effect on the lifecycle of animals.

Continuing, Ms. Beers stated that two neighbors have seen Manatees in the creek and Indigo black snakes - both are endangered. The residents are concerned that if Ruffner Road is used, people will park there and cut through to the dorms. There will also be heavy traffic as the result of emergency vehicles, students moving every semester, and weekly garbage trucks. Parking is not adequate. Most students have a car, especially upper classmen. She urged Council to prohibit access through Ruffner Road.

Ms. Beers stated that there would be excessive noise from equipment, parties, air conditioner units, etc. Landscaping will not block the noise. Sewage will have to be pumped upward and there is a risk of contaminating the creek if there is a hurricane. Additionally, she fears that the flow of the creek will be disrupted and lead to flooding. She asked Council to conduct more research before approving this proposal.

Nancy Johnson, 2514 Ruffner Road, disputed that students are camping out in line for housing. She said there is adequate housing; the students stand in line because they want to live at the complex that has a swimming pool. Regarding the comment about a maintenance facility being built on this site, Ms. Johnson said it is irrelevant because the facility has been built elsewhere. Regarding the buffer, the city's Comprehensive Plan provides that it should be increased if the adjacent development is more than one story. She noted that there are two-story homes in the subdivision.

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Continuing, Ms. Johnson said under no circumstances should Ruffner Road be used as access. For months they would have to endure the construction and it is not acceptable. Regarding the footbridge proposed, she said that the creek does flood. Florida Tech previously had a bridge; however, it acted as a dam. Florida Tech never cleaned it. It caught debris and her husband kept it clear. Hurricane Erin solved the problem by wiping out the bridge.

Ms. Johnson stated that students who can afford Florida Tech will be able to afford cars. She questioned whether the parking will be adequate and said every student should have a parking spot on campus. Ms. Johnson concluded by saying she has looked at the woods for the last 16 years and she doesn't want to look at a wooden fence. She would prefer an iron fence with spikes so the students won't climb over. The facility will be a money making venture for Florida Tech and she has a problem with them making money at the expense of the residents of Hickory Hills. There are too many unresolved issues and she encouraged Council to table the issue.

Oli Johnson, 2514 Ruffner Road, stated that he is an FIT alumnus and an environmentalist. As a resident, he is concerned about the impact 336 students will have on traffic, noise, and light. Also, he is dismayed with the school's plan to build seven, three-story structures next to a 40-year old subdivision.

Mr. Johnson said that the development of this project will adversely affect the water quality in Crane Creek and ultimately the Indian River Lagoon; pollutants will enter the creek. He commented that SJRWMD has no record of a permit application for this project. Permitting from FDEP or the Army Corps of Engineers will be required. The siting of a functional retention pond is critical; therefore, all permits should be in place before the site plan is approved. He referenced the Environmental Impact Assessment and stated that the area needs further study by a hydrologist. Council should advise FIT to build in another area. Mr. Johnson concluded by volunteering to work with the school to build nature trails and a passive recreation area on the property.

Mike Segebarth, 21 Edgewood Drive, informed Council that he lives at the corner of Edgewood Drive and Ruffner Road. As a resident of Hickory Hills Subdivision, he encouraged Council to deny the plan. He added that he wants the natural environment saved; more asphalt means more flooding.

Continuing, Mr. Segebarth referenced the packet of information he distributed to Council (in the agenda package). The information contains newspaper articles about a similar situation in Orlando. He asked Council to specifically review the article dated June 6.

Mr. Segebarth commented that Florida Tech has not convinced him that they will be a good neighbor or that they can manage the development and contractors. As an example, he referenced the partial clearing that took place on the site by one of the contractors. Mr. Segebarth concluded that it looks as if the school knows it will get the plan approved; Florida Tech is not showing any respect for Council's authority.

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Barbara Segebarth, 21 Edgewood Drive, urged Council to vote against the plan. She referenced the invitation from Florida Tech to a reception and informational meeting regarding the site plan. She noted that just two weeks later the plan appeared on the Planning and Zoning agenda and activity started occurring on the site before Council issued approval.

Mrs. Segebarth said it appears as if Florida Tech considers this a done deal and they are simply going through the motions for the record. She concluded by referencing the packet of information she and her husband distributed (newspaper articles) and said in Orlando it resulted in greater and improved communication. She asked Council to carefully review the request and vote to deny.

Mr. Contreras noted that the newspaper articles relate to a situation that is not similar; it is like comparing apples and oranges. He asked Ms. Segebarth where she would suggest Florida Tech build. Ms. Segebarth replied that they could build at University Boulevard and Babcock Street. Additionally, she said she is sure they have other property available.

Joey McConnel, 2502 Ruffner Road, said her property backs up to the creek and when the creek floods, water is within 15' of her house. She reported that the natural hammock helps stop the creek from flooding her basement. Ms. McConnel informed Council that she has been a realtor in the area for 18 years. She noted that 40% of her calls are from FIT upper classmen who are married with families. If the student population has not increased, she questioned the demographics that are being used to justify new housing that will cause people to pull out of the area's market place. Many of the upper classmen buy homes in Melbourne, Palm Bay and Viera. These students do not want to raise their families on campus.

In response to Mrs. Palmer, Ms. McConnel said it is her experience that people who go to realtors do not want to live on campus because they want their own space – not because there are not enough facilities on campus.

Mrs. Palmer asked who she felt impacted the residential areas around the school more, the students who live on campus or the ones who live off campus and drive into the area. Ms. McConnel said she could not answer that. She added that Ruffner Road has not been impacted yet except for foot traffic from people accessing the botanical gardens. Mrs. Palmer asked if she was concerned about the real estate market and Ms. McConnel replied that she is concerned about that along with her neighborhood.

Joel Noyd, 21 Vida Way, stated that just because the site plan is done right doesn't mean it is a good idea. He added that the woods have value and once they are gone, they can't be rebuilt. A dormitory can be built anywhere and what the school is proposing to do is not a smart thing.

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Mitch Needelman, 2317 S. Bignonia Street, stated that he has serious reservations about the project. He noted that he has been a resident for 20 years, 16 in this area; served on the City of Melbourne Board of Adjustment; original member of the Land Use Comprehensive Plan committee in 1988; retired law enforcement officer with the Department of Environmental Protection; and holds a master's degree in public administration.

Mr. Needelman said he lives in one of the seven homes east of this area – a “delta” east of Babcock Street. He referenced the changes made to drainage in the city since Hurricane Erin and noted that nothing has been done to take care of the flooding in the area of the delta; that area continues to receive all of the water.

Mr. Needelman referenced the information and stated that this is a FEMA designated floodway; a floodplain area. This area absorbs water and slows the volume of water before it enters the area downstream where he lives. His concern relates to the displacement of water. He questioned whether approval of the site plan would promote the public health, safety, welfare, etc. He noted that Council must make this finding in order to approve the plan. He asked Council to evaluate other solutions and consider his rights as a property owner in the area.

Mrs. Palmer noted that the SJRWMD will issue or not issue permits based on the plan. Mr. Needelman said SJRWMD will not look downstream where the displacement of water will cause flooding and that is an issue that City Council has to determine.

Jay McNeely, Florida Tech student and President of Student Government, reported that there are students for and against this project. He noted that most of the students he has talked with are in support of the plan. He added that he likes the plan; it will strengthen the University, which means his degree will be worth more when he graduates. Centralization of the dorms will allow one event to be conducted instead of 10. It will add to the whole campus environment. He reported that he lives off campus because he needs his own room; however, he would definitely want one of these apartments. As a student, he encouraged Council to pass the request.

Mrs. Poole referenced the on-line petition containing 570 signatures.

Mr. McNeely said he would have signed that petition as it is written. (Note: The petition indicates that those signing object to the clearing of the FIT botanical gardens, also known as “the jungle.”)

Mr. Contreras said as he understands it, this is not the area known as “the jungle.” Mr. McNeely said the area south of Crane Creek is considered the botanical gardens area.

Scott Wilson, Florida Tech student government senator, stated that a good number of students are supportive of the request. He explained that some people who signed the petition support the site plan as long as the botanical gardens are not touched.

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Mr. Wilson said his concern is for the environment as well as student safety. He reported that a student was killed last year while driving to campus. He informed Council that the students who will be living in the apartments are upper classmen who are focused on degrees. He assured Council that they are not heathens and this will not be a “Lord of the Flies” community. He encouraged Council to approve the plan.

Mrs. Poole asked Mr. Wilson what should be done with the students who live on the other side of Babcock Street. Mr. Wilson said the school wants to eventually shut down those facilities. Hopefully they won’t have any more students dying on the way to class. Mrs. Poole said these are grown students and they need to learn how to cross the street; that is not a valid reason for wanting to build on the creek.

Beth McMillen, representing the Marine Resources Council, stated that the undeveloped parcel is a rare example of a pristine habitat preserved in the city. The property plays a role in flood control and portions of the site can be inundated by two inches of water. She noted that there is recent evidence of endangered species and further study is in order.

Mr. Contreras asked if she is saying the EIA report is incorrect. Ms. McMillen replied that she was not sure and said she was representing Jim Eagan from the Marine Resources Council.

Laurel Edwards, Florida Tech student, stated that a close friend of hers started the on-line petition. She added that at the time, the students were misinformed about the location of the dorms. They were under the impression that the botanical gardens included this area. She noted that it is an easy mistake. She displayed a copy of a city publication which indicates that this area is part of the gardens.

Continuing, Ms. Edwards said while the petition has errors, there are still 500-plus people who signed that do not want the construction. She added that over the summer, she is living in an apartment complex across Babcock Street. She crosses daily and has not experienced difficulties. Ms. Edwards said students were not polled about this and the student body president does not represent all students. She added that this issue came up when most of the students left for summer.

Ms. Edwards addressed the parking issue and stated that when she lived in Roberts Hall, at least 60 cars parked on the dirt lot (proposed for a parking lot). She noted that this shows there will not be an additional 173 parking spaces because there are cars parked there now. Regarding “the jungle”, she pointed out that it is the entire wooded area; it includes the north side of Crane Creek. She concluded by saying a great number of students do not want this approved. She submitted photographs depicting the destruction caused by a bulldozer entering the jungle (related to work on the site plan).

Mr. Contreras referenced the bulldozer entering the site without authorization and stated that this happens with other developments, too. Fines are usually rendered. Ms. Edwards replied that this was not a random incident and it doesn’t show responsibility on FIT’s part.

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Curtis Johnson, 2415 South Country Club Road, stated that the people opposed to the development live in the area year round. He has heard the botanical gardens be redefined from an entire area to a small piece of land. If we were not in a drought, the property being proposed would be under water.

Mr. Johnson said if we believe in the environment, then the entire project should be thrown out and the property placed on an endangered species list. He added that he doesn't know who conducted the (EIA) study; however, he can walk out and find tortoises, cranes, and a few weeks ago he saw an American Eagle. When the First Baptist Church tried to build down the street, all kinds of (endangered species) were found. And, that property is right across the street on the other side of Babcock Street. Additionally, several people have said there are manatees.

Mr. Johnson concluded by saying FIT could have built on other property. He pointed out that the Melbourne Square Mall property used to belong to the school.

Mrs. Palmer asked how this development would stop manatees from enjoying Crane Creek. Mr. Johnson said there will be parties, runoff from parking lots, runoff from oil changes, beer cans, and trash that will enter the creek. The grasses will be polluted and that is part of the food chain.

Mr. Contreras asked Mr. Johnson if he disagrees with the EIA study. Mr. Johnson said that is correct and added that a property on the east side of Babcock Street lost 50% of its usage because of endangered species. He said the environment of the two properties should be similar, if not identical.

John Wilt, 3108 Country Club Road, stated that he represents many residents on Country Club Road. He reported that the residents on Country Club Road were also promised that Florida Tech would be a good neighbor. Unfortunately since the new engineering and life science buildings were constructed almost two years ago, it has been a constant battle to keep the quality of the neighborhood intact. He explained that noise is created by the air conditioning units on top of the new science building on Country Club Road. When the units were turned on in August 1999, the noise exceeded City Code.

Mr. Wilt played a video in order to demonstrate the noise they have had to endure. He stated that he is not able to use his yard as a result. Mr. Wilt said the city and the residents have repeatedly asked Florida Tech to reduce the noise. The school has responded that they do not have the money to reduce the noise to an acceptable level. Now, almost two years later with millions having been spent on the new life sciences, engineering, and athletic buildings, they are being told that Florida Tech is ready to spend another \$7 million on dorms.

Mr. Wilt stated that it is unfair to the Country Club residents to allow Florida Tech to expand without solving the current noise problem. He asked City Council to require Florida Tech to repair the air conditioner noise prior to approving any new construction.

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Mr. Wilt responded to Mr. Contreras's questions regarding the problems experienced with construction traffic.

Mr. Hill said Mr. Wilt is correct and added that we have had to struggle a couple of years to get compliance by Florida Tech. The staff at the school has attempted to resolve the issues and they have been responsive over time; however, it has required continual effort by the city and the neighbors.

Discussion followed regarding the noise generated by the air conditioners on top of the science building.

Recessed: 11:46 p.m.
Reconvened: 11:52 p.m.

Mrs. Walker was absent from the Council Chamber.

Moved by Contreras/Poole to continue the meeting beyond midnight to finish this item and consider, at least, Item 18. Motion carried unanimously. (Five votes)

Mr. Crooks stated that the review by staff and the Planning and Zoning Board has determined that the site plan as submitted is consistent with and complies with all regulations. He asked his witnesses to address the various comments made about flooding, environmental concerns, noise from the air conditioner, and buffer areas.

Mrs. Walker returned to the Chamber at 11:55 p.m.

Mr. Aiken referenced the comment made about parking. He agreed that students are already parking on the dirt lot; however, he stressed that 173 additional spaces will be provided. These spaces will be in addition to the spaces that exist on campus.

Mr. Aiken said they have followed the site plan procedure; however, they realize that their homework is not done. They have a lot of work to do in order to receive permits. They are required to follow all laws and regulations. He added that the city should not expect full engineering to take place before the site plan is approved.

Mrs. Palmer asked about the elevation of the bridge. Mr. Hambleton confirmed that the foot bridge will not have any piers. It will be a clear span structure, abutment to abutment.

Mr. Contreras asked how the EIA report was conducted. Mr. Aiken stated that they hired a professional, certified with the city, qualified to conduct the study.

Mrs. Poole pointed out that the Chairman of SJRWMD, Bill Kerr, conducted the EIA study. Also, she noted that the applicant has hired Frazier, the city's continuing engineering consultant.

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John Milbourne, Director of Facilities Management, addressed the issue of noise. He explained that the cooling towers are highly sophisticated pieces of equipment. They cannot make rapid changes that are not properly engineered. He discussed the history of the noise issue and outlined the steps they have taken to correct the problem. He said part of the difficulty relates to the City Code – the city is not sure of what is necessary. He said he understands there is still work to be done. And, he added that they have planted palm trees, which in time will act as a buffer. He addressed the steps taken to correct the construction traffic. He noted that Florida Tech has attempted to be a good neighbor. He added that Mr. Wilt indicated that he would be a thorn in their side, and he has.

Mrs. Poole asked Mr. Milbourne if he would want to live (in Mr. Wilt's home) with the noise. Mr. Milbourne said he does not know what the noise level is inside the home. Mrs. Poole added that palm trees don't do much to buffer noise.

Mr. Contreras expressed concern that it took almost two years to temporarily resolve the noise issue. He questioned a premier engineering institution not being able to resolve the issue in a timely fashion. It has fueled bad faith from the residents and meeting the Code requirements almost becomes a moot point to the residents after all this.

Mr. Milbourne stressed that the city is not able to tell the school what an acceptable level is.

Mrs. Palmer said this should be extremely embarrassing for FIT. For two years they have known that they have been a nuisance to the surrounding area, yet they haven't made every effort to correct the problem. She referenced Mr. Milbourne's comment about Mr. Wilt being "a thorn" and said that although legally she can't look at that issue, it gives pause knowing that the school has such disregard for the area.

Mr. Crooks referenced the conditions and said they are requesting approval of the conditions presented at the Planning and Zoning Board meeting, prior to any changes made by the board.

Attorney Gougelman requested the following items be included with the record: Pages 113 – 189 of the agenda package, letter from Alan Smith dated June 25, letter from James Kennedy dated June 22, letter from FIT President Lynn Weaver, dated June 22, the FIT "jungle" petition, memo from City Manager Hill to Council Member Poole regarding value of homes in Hickory Hills, the City of Melbourne Comprehensive Plan, Appendices B and D of the City Code, the applicant's power point presentation, pictures submitted by various speakers, video submitted by John Wilt, and the official site plan.

Mrs. Poole recommended Council discuss the issue prior to putting a motion on the floor.

Mrs. Poole stated that the Planning and Zoning Board did not receive the revised site plan until the evening of their meeting. She noted that the EIA report indicates that the

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soil is occasionally flooded for seven days to a month following heavy rains. Portions on either side of the creek are located in a FEMA designated floodway and special flood hazard area flood zone. The wetlands on the site are functional and provide water quality treatment, flood protection, and habitat for wetland dependent species. The lower areas serve to prevent lateral salt water intrusion.

She noted that Florida Tech has sold 70 acres, but say they are tight for a place to build student housing. She added that the logical place would be on the corner of Babcock Street and University Boulevard next to their present housing at Southgate.

Mrs. Poole stated that having heard from the residents and students there is sufficient reason to deny because the request does not meet all of the Code requirements. She referenced the requirements outlined in Article XX(c), Appendix B, City Code. Additionally, the noise from the students, air conditioning units, seven dorms, lighting and security lights across the bridge would impact the area residents.

The impact of the development will affect protected species, wetlands, aquifer recharge areas, and natural resources. Past experience and testimony have shown that Florida Tech has not been a good neighbor.

Mrs. Poole questioned why Florida Tech is proposing this intense student housing development at this location. She suggested the school give a conservation area to the city to show the community that it cares about Crane Creek. She concluded by referencing the amount of taxes paid by adjacent residents versus no taxes paid by Florida Tech.

Mrs. Walker stated that Mrs. Poole made some good points. Also, Council needs to keep in mind some of the things said by other speakers, particularly Mr. Needelman. Council has to consider what this will do to our neighborhood. The responsibility is on Council to preserve the health and welfare of an established residential area and all the other residents along the creek. She added that she cannot support this, regardless of what has been recommended. She said she knows there are endangered species along the creek – she has seen gopher tortoises herself and she can refute most of the things that have been said, although she won't.

Mrs. Poole said she has compiled a list of the things that would give reasons to deny the item.

Mr. Contreras said the burden of proof is on Council to substantiate a denial. Therefore, if Mrs. Poole has competent evidence, he would like to hear it.

Mrs. Poole said she has all the faith in FIT and she does not believe they would ever sue the city. Continuing, Mrs. Poole referenced the following to support denial of the request: Comprehensive Plan, Conservation Element, Page 7:30, 11. – To protect, enhance, and preserve unique irreplaceable resources of Crane Creek by allowing only development activities that would not damage these resources. Page 2:3, Future Land Use -

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Institutional uses may be allowed where no negative impacts will be felt by adjacent residents. Objectives and Policies, 2:19 - Provide and update Land Use to regulate land development to reduce, eliminate and/or prevent negative impacts related to noise, light, drainage, water quality. Development Code - R-1AA single-family residential is intended to protect or promote high quality residential. Prohibited uses: Any use not in keeping with the single-family residential character of the district. Dormitory use where not an integral part of a conditional use complex or plant.

Mrs. Palmer asked Attorney Gougelman to comment on Mrs. Poole's evidence. Mr. Gougelman said it is not evidence that she presented. She presented excerpts from the Comprehensive Plan and Code that are statements of law. She selected those as reasons why the site plan should be denied. It is up to Council to determine whether the evidence that has been presented at this meeting indicates that the plan is consistent or inconsistent with the standards. He added that if Mrs. Poole is going in the direction of a motion for denial, she is going in the right direction because she is looking for specific standards in the Code that the site plan must satisfy.

Mrs. Palmer asked if the plan satisfies all of the Code requirements. Mr. Gougelman said he is not an expert witness. This is a determination that must be made by Council.

A brief discussion followed regarding the statement made by Mrs. Poole.

Mr. Contreras said Mrs. Poole has brought out areas that may contradict staff's statement that the plan complies with the regulations. He requested that the statement be investigated by staff.

Moved by Poole/Walker to deny SP-2001-03, Florida Tech.

Mr. Contreras said the issues need to be investigated by staff; therefore, he won't support the motion. Mrs. Palmer said she feels the same way. She added that the city has spent hundreds of thousands of tax payers' dollars on lawsuits that could have been avoided if this type of research was conducted before a decision was made. She said she supports sending the item back to staff so Mrs. Poole's comments can be reviewed. Mrs. Walker said she supports that.

Moved by Walker/E. Palmer to postpone the item until such information can be obtained from staff. Motion carried unanimously.

18. RESOLUTION NOS. 1697 AND 1698: Proposed resolutions to implement provisions of the Communication Services Tax Simplification Law as it relates to municipalities.
 - a. Resolution No. 1697: A proposed resolution to adopt the maximum local communication services tax rates effective October 1, 2001 of 5.6% and effective October 1, 2002 of 5.1%.

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- b. Resolution No. 1698: A proposed resolution making the election to not require and collect permit fees from providers of communication services for use of the municipal roads and rights-of-way and to increase the city's local communication services tax rate by .12% effective October 1, 2001.

Mr. Hill briefed Council. These are resolutions to implement provisions of the Communications Services Tax Simplification Law passed by the 2001 Florida Legislature and signed by Governor Bush in early June.

During the 2000-2001 fiscal year city budget adoption process we reported changes were made to state law regarding the authority of local government to collect certain franchise fees, utility taxes, and permit fees associated with telecommunications providers. The "Communications Services Tax Simplification Law" was passed completely overhauling the State Statutes with regard to collection of taxes, fees, and permits by the state and local governments on communications services providers. This law was to simplify one collection point at the state level for all state and local revenues raised from communications services providers, and to ensure all taxes paid by the various communications service providers are at the same rate within a jurisdiction and are competitively neutral. For example, Melbourne has the following rates for communications service providers:

Telephone franchise	1%
TV cable franchise	5%
Voice, video and data communication franchise	5%
Telecommunications tax	7%

Because there are so many communication services providers, tax compliance for the providers was burdensome to comply with the tax rates and franchise and permit requirements for each local government. This law provides relief to the providers and is meant to be revenue neutral to local governments.

A requirement of the 2000 law was for local governments to provide specific data about the revenues collected from all communications services providers. The State Revenue Estimating Conference then calculated conversion rates for each local government which are intended to generate the same revenue adjusted for growth under the simplified, unified tax rate as was received under the previous tax and franchise fee rates.

The conversion rates are automatically effective October 1, 2001, but the state also authorized local governments to adopt by ordinance or resolution maximum local communications services tax rates to ensure that sufficient revenues are collected to replace the revenue sources previously in place. Proposed Resolution No. 1697 is to implement this provision of the law.

Two rates are included. The rate to be effective October 1, 2001 is only for one year and is higher than the subsequent years rate because it will only be collected for 11 months

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and is intended to generate a year's worth of revenues. The second rate to be effective October 1, 2002 will be the rate to apply for all remaining years.

The maximum rates Melbourne can adopt to be effective October 1, 2001 and October 1, 2002 are 5.60% and 5.10%, respectively. The city should adopt these maximum rates to ensure that sufficient revenues are received to replace the franchise fees and telecommunications services taxes, which will no longer be collected. The city currently levies the maximum amount authorized by law for franchise fees and the telecommunications services public service tax. These fees and taxes are budgeted to generate \$3,823,274 in the 2000-2001 fiscal year. Resolution No. 1697 must be adopted and transmitted to the Florida Department of Revenue by July 16, 2001.

The 2000 and 2001 laws require local governments to elect whether they will require and collect permit fees from communications services providers to use the roads and rights-of-way. The laws further established certain criteria with regard to the calculation of the permit fees and established a maximum permit fee of \$100. The laws provide that if a local government elects to require and collect permit fees, then its local communications services tax rate is reduced by .12%. Conversely, if a local government elects to not require and collect permit fees, then the local government may elect to add .12% to its local communications services tax rate.

Choosing to not require and collect permit fees does not prevent the city from establishing rules and regulations with regard to providers of communications services who use or occupy the roads and rights-of-way. The city still retains authority regarding the regulation and management of municipal roads and rights-of-way provided this occurs in a reasonable and non-discriminatory manner. This choice also only pertains to communications services providers; not other users of the roads and rights-of-way.

Our elections must be made and transmitted to the Department of Revenue by July 16, 2001. Proposed Resolution No. 1698 implements this portion of the law. Resolution No. 1698 is to elect to not require and collect permit fees from communication services providers and to elect to increase the local communications services tax rate by .12% effective October 1, 2001. The totals will be 5.72% for October 1, 2001 and 5.22% for October 1, 2002.

Subsequent actions regarding this matter will need to include ordinance changes repealing the existing fee structure and redefining the provisions for the use of rights-of-way.

Mr. Palmer asked if we are assured that our revenue will not drop. Mr. Hill said we don't know. We provided requested information to the state, which it used in modeling. The fees are intended to replace the amount of revenues previously received by the city. Hopefully by adopting the maximum rates, we will achieve at least a revenue neutral position.

Attorney Gougelman read each resolution by title.

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Moved by E. Palmer/Contreras for approval of Resolution No. 1697. Motion carried unanimously.

Moved by E. Palmer/Poole for approval of Resolution No. 1698. Motion carried unanimously.

Note: Items 19 – 22 were postponed until the July 10 meeting.

19. ORDINANCE NO. 2001-34: (First Reading) A proposed ordinance amending Chapter 23, Retirement and Pensions, related to the variable cost of living adjustment provisions in the Firefighters Pension Plan.
20. ORDINANCE NO. 2001-35: (First Reading) A proposed ordinance to amend Chapter 20, Offenses, as recommended by the Code Enforcement Division.
21. ORDINANCE NO. 2001-36: (First Reading) A proposed ordinance to amend Chapter 32, Utilities, as approved by the City Code Review Committee, Section 1.
22. COUNCIL ACTION RE: Discussion of marketing the Babcock Street former Palms 8 Theater site.
23. COUNCIL ACTION RE: Approval of proposal submitted by SunTrust Bank Central Florida, to purchase the Babcock Street Community Redevelopment Agency Revenue Bonds, Series 2001, in the maximum principal amount of \$800,000 at a fixed annual interest rate of 4.59% to be repaid over 3 years.

Proposals were requested from local banks to purchase bonds in the maximum principal amount of \$800,000 to provide permanent financing for the property located at 351 Laurie Street (formerly occupied by the Palms 8 Theater), which was recently acquired by the city. In February 2001 a loan was provided from the Water and Sewer System to temporarily finance the acquisition of the Laurie Street property. Once these bonds are issued, that loan to the Water and Sewer System will be repaid.

The terms originally specified included: 15-year repayment plan with a fixed annual interest rate, preference for a fixed annual interest rate, no pre-payment penalty, annual principal and interest payments, and bank attorney fees to be paid by the bank.

Subsequently, a clarification letter was issued stating that the city would entertain an alternative proposal for a three-year term with a balloon payment at the end of three years. This was to provide flexibility with regard to the payment term to ensure that proposals would be received since there is essentially no history on the tax increment revenues for this Community Redevelopment Agency. Additionally, that option would allow the maximum flexibility should the city sell the property in the short run.

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The only responsive proposal was provided by SunTrust Bank, Central Florida, which proposed an interest rate of 4.59% fixed with a balloon payment at the end of three years. There is no prepayment penalty. The city may elect to pay a portion of the principal any time before the end of the three-year period. Two other banks submitted proposals which are considered to be non-responsive because they failed to comply with proposal specification requirements.

At an annual interest rate of 4.59% the annual interest payment on \$800,000 of bonds would be \$36,720 and total interest over the life of the bond issue would be \$110,160. The city retains the ability to repay principal any time during the three years. We may wish to pay a portion of principal each year to reduce the commitment at the end of the three year term. This can be considered each year as we develop the budget for the Babcock Street Community Redevelopment Agency.

Moved by C. Palmer/Contreras for approval of the proposal submitted by SunTrust Bank, Central Florida to purchase the Babcock Street Community Redevelopment Agency Revenue Bonds, Series 2001 in the maximum principal amount of \$800,000. Motion carried unanimously.

24. COUNCIL ACTION RE: Approval of proposal submitted by SunTrust Bank Central Florida, to purchase the Golf Course Revenue Bonds, Series 2001 in the maximum principal amount of \$400,000 at a fixed annual interest rate of 5.05% to be paid over 10 years.

Proposals were requested from local banks to purchase bonds in the maximum principal amount of \$400,000 to partially finance the renovation of greens and drainage improvements at the Melbourne Golf Course. The basic terms specified were: 10-year repayment term, preference for a fixed annual interest rate, no pre-payment penalty, annual principal and interest payments, and bank attorney fees to be paid by the bank.

The only responsive proposal was provided by SunTrust Bank, Central Florida, which proposed an interest rate of 5.05% fixed for a 10-year repayment period. Three other banks submitted proposals, which are considered to be non-responsive because they failed to comply with proposal specification requirements.

At an annual interest rate of 5.05% the annual debt service payment on \$400,000 of bonds would be \$51,928 and total interest over the life of the bond issue would be \$119,277.

Moved by Poole/E. Palmer for approval of the proposal submitted by SunTrust Bank, Central Florida to purchase the Golf Course Revenue Bonds, Series 2001 in the maximum principal amount of \$400,000 at a fixed annual interest rate of 5.05% to be repaid over 10 years. Motion carried unanimously.

Note: Items 25-26 were postponed until the July 10 meeting.

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25. COUNCIL ACTION RE: Appointment of voting delegate to the Florida League of Cities 75th Annual Conference, August 23-25, 2001.

26. COUNCIL ACTION RE: Appointment of fifth member to the Firefighters' Pension Plan Board of Trustees

27. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

28. ADJOURNMENT

Moved by Buckley/Contreras to carry over the remaining items (19-22 and 25-26) until the next regular meeting. Motion carried unanimously.

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

The meeting adjourned at 1:10 a.m.

City Clerk – 7/5/2001

Approved by Council: July 10, 2001 w/the noted revision to page 13