

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 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. Reverend Robert Brukart, Director of Pastoral Care, Holmes Regional Medical Center.
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, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Bud Emerson	Assistant City Manager
	Peggy Braz	Planning and Zoning Administrator

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented the following proclamations:

November 2001, Puerto Rican Heritage Month, accepted by Sam Lopez, President, United Third Bridge, Alex Gonzalez, Chairperson, Puerto Rican Day Parade.

Recognizing Fire Chief Walt Chamberlin on the 30th anniversary of his employment with the City of Melbourne; accepted by Chief Chamberlin.

Recognizing the 2001 Eau Gallie Little League 9/10 Girls Softball All Star Team for their State Championship win; accepted by Manager Tim Doerr, Coaches Mike Coffey and Russell Reese, and team members.

Welcoming Lucien Hasley, a Frenchman who as a 10-year old boy assisted paratroopers from the 82nd Airborne Division of the United States Army during the Invasion of Normandy. Mr. Hasley is visiting Mr. Thomas Porcella, a Melbourne resident and paratrooper with the 82nd Airborne Division.

5. APPROVAL OF MINUTES - August 14, 2001 Regular Meeting

Moved by E. Palmer/Hand for approval. Motion carried unanimously.

6. CITY MANAGER'S REPORT

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Mr. Hill asked that the following be added as Item No. 17d to the agenda: Emergency replacement of 130 feet of 30" corrugated drain, Azurix North America, Longwood, Florida - \$17,368.

Moved by Hand/Walker to add item No. 17d to the agenda as recommended. Motion carried unanimously.

Mrs. Palmer asked for an update on the Brevard County landfill issue. Mr. Hill informed Council that the city asked the county to present a plan for the entire site. The county has indicated that it is working on an overall package to present to Council sometime over the next few months.

Mr. Hill reminded Council that the first budget public hearing is scheduled for September 4 at 7:30 p.m.

Mayor Buckley pointed out that the evaluation forms for the City Manager and City Attorney have been distributed. He recommended that Council action be scheduled on an October agenda.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2001-33: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 25, Signs and Advertising, as recommended by the Code Review Committee, Section 1. (Postponed by Council 7/10/2001) (First Reading 6/26/2001)

Attorney Gougelman read Ordinance No. 2001-33 by title. There were no public comments.

This item was postponed on July 10 to allow the Planning and Zoning Board an opportunity to review and comment. The board reviewed and recommended approval of the ordinance at its regular meeting held on August 16.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2001-33. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2001-40 (A&V #242): (Public Hearing/Second Reading) A proposed ordinance to abandon and vacate the western one-foot of an existing 10-foot public utility and drainage easement located on Lot 11, Block 1, Ixora Park, Plat No. 2. (Requested by Jose and Lissette Valcourt) (First Reading 8/14/2001)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

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

Moved by E. Palmer/Hand for approval of Ordinance No. 2001-40. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2001-41 (A&V #245): (Public Hearing/Second Reading) A proposed ordinance to abandon and vacate a 130-foot wide drainage easement over a retention pond on both sides of the common property line between Lot 3, Block A, North Drive Industrial Plaza Subdivision and Lot 2, Plaza North Subdivision. (First Reading 8/14/2001)

The attorney read the ordinance by title. There were no comments from the public.

Moved by Walker/E. Palmer for approval of Ordinance No. 2001-41. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2001-42 (Z-2001-908AD(C)/DOWNTOWN REZONING): (Public Hearing/Second Reading) A proposed ordinance to rezone a nine block area of Downtown Melbourne from C-2 (General Commercial) to C-1 (Neighborhood Commercial), located west of Riverview Drive, north of Strawbridge Avenue and east of Tangerine Street. (Requested by City of Melbourne) (First Reading 8/14/2001)

From the agenda report: Attorney David Dyer, representing Lee and Sondra Austin, has submitted a letter taking the position that the 6/7 rule should have been applied on first reading; therefore, the item should be withdrawn because first reading approval was not valid. The City Attorney responded to Mr. Dyers' claims. Mr. Gougelman reports that the 6/7 rule is a charter provision dating to 1969. It historically has been applied at the time of second reading. Mr. Gougelman has also provided a number of other defenses of the application of the 6/7 rule at second reading. Mr. Dyer's letter and Mr. Gougelman's response have been made a part of the record and are included in the agenda package.

The City Attorney read the ordinance by title.

David Dyer, attorney representing Lee and Sondra Austin, stated that it remains his clients' position that the change in zoning is not warranted. Additionally, approximately 25% of the owners submitted a petition, which shows substantial opposition. He asked Council to not

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

impose a zoning change that the property owners did not seek and do not want.

Mayor Buckley referenced the information distributed to Council, which indicates that the petition and letters have been recalculated and the percentage opposed to the rezoning is 35.36%. Mr. Hill added that a map has been provided along with various details on the parcels.

Mrs. Poole read from the August 14 minutes on this item. Additionally, she referenced the additional material distributed to Council and stated that she requested the information yesterday; however, did not receive it until after 5:00 p.m. today. She stated that the petition needs to be reviewed by Council; therefore, she would like the item postponed to allow Council time to review the material.

Moved by Poole/E. Palmer to postpone this item until the next meeting to allow Council time to review the additional information distributed.

A brief discussion followed regarding the date of postponement. The following substitute motion was made:

Moved by Poole/E. Palmer to postpone this item until September 25. The roll call vote was:

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

Nay: Buckley

Motion carried.

12. ORDINANCE NO. 2001-43: (Public Hearing/Second Reading) A proposed ordinance to amend the City Charter and Chapter 11, Elections, related to the qualifying period for City Council candidates. (First Reading 8/14/2001)

Mr. Gougelman read Ordinance No. 2001-43 by title. There were no public comments.

Moved by Poole/C. Palmer for approval of Ordinance No. 2001-43. The roll call vote was:

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

Nay: None

Motion carried unanimously.

13. ORDINANCE NO. 2001-44: (First Reading) proposed ordinance to amend Chapter 31, Traffic and Vehicles, relating to the solicitation of employment, business or charitable contributions from the occupants of vehicles on the streets of the City. (Directed by Council 8/14/2001)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

The City Attorney read Ordinance No. 2001-44 by title.

Mr. Hill briefed Council. At the August 14 meeting, Council postponed further discussion on bucket drops until this meeting to allow the City Attorney time to review whether bucket drops could be limited to Melbourne groups only and if restrictions could be added.

The attorney has indicated that the city may not restrict such activity to Melbourne groups only. However, we can provide a minimum age requirement. The minimum age proposed is 18. Additionally safety procedures have been added including requiring liability insurance, use of safety vests, and limiting the number of solicitors at each intersection to four. Further, the ordinance limits each group to three solicitations per year. These restrictions generally follow those in place in the City of Gainesville.

Moved by E. Palmer/Poole for approval of Ordinance No. 2001-44.

Mr. Contreras stated that he feels this ordinance is a good compromise. It allows organizations to continue soliciting with key elements/restrictions in place. Mrs. Palmer agreed that the ordinance looks good; however, she stated that she has a problem with the requirement for insurance. That provision seems to discriminate against organizations that do not have funding available to purchase insurance. She noted that the other safety requirements may negate the need for the insurance.

Mayor Buckley referenced the memorandum distributed to Council outlining insurance costs. If an organization has liability insurance, it may automatically cover this type of activity. If the policy does not cover the activity, a rider could be added for a cost ranging from \$50 - \$250. If an organization does not have liability insurance, the premium could range from \$500 - \$1,000. The Mayor concluded by stating that there is no sense in having a bucket drop if all the funds will be used to purchase insurance.

Moved by C. Palmer/Hand to amend the motion by deleting the requirement for insurance.

Mr. Palmer asked the attorney if we are setting the city up for lawsuits by dropping this requirement. Attorney Gougelman said the insurance is actually a protection if there is a lawsuit. The activity of allowing people to run around in traffic could result in an accident. The injured person would probably hire an attorney and everyone would be sued.

In response to Mrs. Palmer, Attorney Gougelman confirmed that we are currently allowing solicitations without the requirement for insurance. Mrs. Palmer stated that we need to look at things in light of common sense, not fear of litigation.

Mr. Hill said that typically most non-profit organizations carry liability insurance. If they do not carry insurance, the price would become prohibitive. The question is how much risk should the city bear.

Mrs. Poole pointed out that Council recently required the Florida Cannabis Action Network to provide liability insurance for an event. She discussed her concerns with

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

allowing the practice of bucket drops and noted that there are safer ways to raise money.

Mrs. Palmer said she hates bucket drops; however, the city needs to be fair, across the board and non-discriminatory. She is glad children have been taken out of the mix and said the safety precautions should make this a safer process. She concluded by stating the requirement for insurance is discriminatory.

The question was called on the amendment. The roll call vote was:

Aye: C. Palmer and Buckley

Nay: Contreras, E. Palmer, Poole, Walker, and Hand

Motion failed.

The question was called on the main motion. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Mrs. Poole stated that although she does not approve of bucket drops, this is a step forward.

14. COUNCIL ACTION RE: Discussion of additional homestead exemption for low income senior citizens. (Postponed by Council 6/26/2001)

Mr. Hill briefed Council. Council previously postponed action on this item to determine the actual number of residents who qualify for the additional exemption. The county has reported the numbers to the city. A total of 3,647 Melbourne residents were initially identified by the county as being potentially eligible for this exemption. Of those potentially eligible residents, a total of 830 have been determined eligible. This results in a reduction of \$20,750,000 in property value assessed for taxation. This is approximately one-fourth of the maximum originally estimated. The effect of the reduction of property value would result in a millage rate increase of .0365 mills. This is an increase of approximately 0.8%. The actual tax revenue effect is estimated to be \$89,156.

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

Mrs. Poole noted that out of 15 cities in Brevard, four have approved the exemption. She stated that she would like to know what the rest of the cities are doing. Director of

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Finance Amy Elliott said she contacted all of the cities. The ones that indicated they are “looking at it” gave the impression that they are not planning to take any action. Indialantic said no way. She said it has been several months since she spoke with each jurisdiction. Mrs. Poole asked that each city be contacted again to see if a decision has been made.

Mrs. Hand said that taking steps to keep the elderly in their own homes is by far cheaper than welfare or nursing homes. Mr. Palmer agreed and suggested the city phase this in over a three-year period like the county. That would allow time to determine the fiscal impact.

Mrs. Palmer said she agreed with phasing this in. She added that we need to, within the confines of city government, allow the elderly to remain independent and in their homes. This exemption is for the low-income elderly. She recommended Council proceed now without waiting for the other cities.

Mrs. Walker agreed that we need to help low income elderly people. She asked how the income level is determined. Mr. Hill said that the property owner must be 65 and the household income not exceed \$20,000 per year. Household income is the adjusted gross income for federal income tax purposes.

Mrs. Walker asked how this would be phased in over a three-year period. Mr. Hill said he believes the county provided \$10,000 the first and second years and \$5,000 the third year. Mrs. Walker asked if this would create a problem for staff. Mr. Hill replied that the county felt the phasing was problematic; however, they have more applicants.

Mayor Buckley pointed out that there is nothing to stop Melbourne from having over three thousand residents apply for the exemption. He added that he does not know how we would control who is eligible and who is not.

Mrs. Poole stated that she is not for this although she would probably qualify. We have an aging population and the number of applicants filing will probably grow. She cautioned that it could get very expensive.

Mr. Palmer emphasized that this is for the low-income elderly – it would not be applicable to all seniors. This is for the group that is having a difficult time making ends meet.

Mrs. Hand asked if there is any other area where the funding can be taken from without increasing taxes. Mr. Hill explained that we tried to show the value of the exemption. He pointed out that we are talking about eight-tenths percent of the total valuation of the city. He added that it is his guess that the amount would be submerged in the overall valuation of the city. Within the pluses and minuses that will happen as part of the property valuation process, the amount is so small that it will be dwarfed by the numbers.

Continuing, he noted that all things being equal, the city would lose that amount of potential revenue. That may mean the millage has to be raised by an amount to offset or expenditures have to be reduced by an equal amount.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Mrs. Walker agreed that the exemption would result in a reduction in revenue; however, she noted that new construction is one factor that would offset and help balance this.

Mrs. Palmer stated that we have some residents that could be charged right out of their homes; the bills will eventually outweigh the income. She commented that the number is flexible – people will die, go to live with their children, etc. The exemption would add to the quality of life and help determine if some can stay in their homes.

Moved by Hand/Walker to approve the drafting of an ordinance to allow the additional homestead exemption and phase it in over a three-year period, similar to the county's procedure. The roll call vote was:

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

Nay: Buckley

Motion carried.

Recessed: 9:04 p.m.

Reconvened: 9:15 p.m.

NEW BUSINESS

15. COUNCIL ACTION RE: Contract for RO Water Treatment Plant Wellfield Flushing Lines, Project C010303, Derrico Construction Corporation, Melbourne, Florida – \$120,300.

Mr. Hill reviewed the agenda report. One bid was received from Derrico Construction in the amount of \$120,300.00. The project consists of constructing approximately 900 feet of 12-inch piping with associated fittings, valves, and discharge structure. The project is to provide a means to flush the wells and the pipelines that provide raw water to the reverse osmosis treatment plant and to dispose of that water. The wells must be flushed before being returned to service and after periodic disinfecting and cleaning to control microbiological growth in the casings and pipes.

The standard contract conditions will apply to this project. The contractor must complete the work within 120 calendar days or be subject to liquidated damages of \$200 per day.

Moved by Hand/Walker for approval of the contract with Derrico Construction in the amount of \$120,300.

In response to Mrs. Poole, Mr. Hill said this process is part of the recommendations that were made after we ran into the microbiological fouling of the filters. Mr. Ralls added that it will need to be done about every two years. He explained the process that will be followed to flush the lines.

The question was called. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

16. COUNCIL ACTION RE: Change Order No. 5 to Joint Project Agreement with the Florida Department of Transportation for Utility Relocations Associated with the U. S. 1 widening from Aurora Road to Post Road, Project No. 99325 - \$54,258.22.

Mr. Hill briefed Council. This is a proposed Utility Work Change Order to amend the existing joint participation agreement with the Florida Department of Transportation (FDOT) for the city's water and sewer work included in the FDOT U. S. 1 road widening project.

The original agreement was approved by Council on December 14, 1999. In recent months it was determined that the city had accepted ownership of a sanitary force main serving Mobiland-by-the-Sea about 15 years ago. City staff had always understood this to be a private line, as it was even shown that way on sewer maps. On researching the ownership of the line, FDOT staff located a recorded document that clearly defines the transfer of ownership to the city.

The force main must be relocated because of conflicts with FDOT's road and drainage work. Since ownership had not been defined at the time of the original agreement, the city's deposit with FDOT does not cover these relocation costs. This will require the city depositing additional funds to cover the work. The cost is \$54,258.22 and funds are available from the project budget balance.

Moved by E. Palmer/Contreras to authorize payment of \$54,258.22 to FDOT for this work and authorize the City Manager to execute the Utility Work Change Order with FDOT.

Responding to Mr. Palmer, Mr. Hill stated that this contract is for work in the right-of-way. Mrs. Walker asked how much money is remaining in the fund. Mayor Buckley noted that \$1.1 was budgeted and \$993,000 has been committed. Mr. Ralls added that we have always received a refund on FDOT projects. Additionally, he noted that our money deposited with FDOT earns interest.

The question was called. Motion carried unanimously.

17. COUNCIL ACTION RE: Consent Agenda

Mayor Buckley referenced item "c" and displayed a picture of a triple trailer semi. He noted that these are the trucks that we are working towards keeping off of Florida highways.

Mr. Hill referenced the replacement pages distributed to Council on item "b."

Moved by Hand/E. Palmer for approval of the consent agenda, including the revised pages distributed with item "b". Motion carried unanimously.

The consent agenda was approved as follows:

- a. Resolution No. 1709: A proposed resolution implementing the revised Investment

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Policy.

- b. Lease Agreement with Coral Viejo, Inc. for public parking located south of Strawbridge Avenue, east of Livingston Street and west of Waverly Place to be funded through the Downtown Redevelopment Fund.
- c. Resolution No. 1710: A proposed resolution supporting the current federal limitation on the maximum size and weight of trucks allowed on interstate highways.

Added to the agenda:

- d. Emergency replacement of 130 feet of 30” corrugated drain, Azurix North America, Longwood, FL - \$17,368.
18. ORDINANCE NO. 2001-37: (First Reading) A proposed ordinance to amend Chapter 19, Licenses, as recommended by the City Code Review Committee, Section 1.

Attorney Gougelman read Ordinance No. 2001-37 by title.

From the agenda report: The committee recommended the deletion of the professional category, which required every professional within an office to have an occupational license. One member felt that it would be more equitable if the professionals were listed as examples only under category 118. The Director of Finance indicated to the committee members that this change would result in a significant revenue loss to the city.

The professional category has been a long established category of occupational licenses. It has been in existence at least since 1981 was in existence quite awhile before that. This category has always applied to each professional whether individually employed or employed by a firm. Prior to the Equity Study Commission review and the subsequent revision to the city's occupational license code as authorized by State Statute, the tax rate for each professional was \$110. That tax rate was reduced to \$100 for each professional as a result of the Equity Study Commission process. This was because the intent was to more fairly tax businesses, professions, and occupations than provided under the previous code.

In May, the Director of Finance provided a report of all the occupational licenses issued for the professional category so far this fiscal year. There are 1,156 such licenses which equates to revenue of \$115,600 since the licenses are \$100 each. All of this revenue would be lost if this category is eliminated and professionals licensed only as part of the professional office category. The revenue in the professional office category would increase slightly for the professionals who are currently licensed, but do not currently require a professional office license because they are a one person office. However, this increase is not expected to result in but a few thousand dollars.

The deletion of the professional category is included in the ordinance as recommended by the City Code Review Committee's recommendation. However, staff is not recommending approval of this change because of its negative impact on the budget.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Jeff Godwin addressed Council and stated that he was a member of the Code Review Committee that made these recommendations. He stated that he is here to support the changes. As a matter of fairness, one recommendation is to delete the professional category. The professional category means that one business may be required to hold several occupational licenses even though it is only one business. Professional firms should be treated like the other categories. Additionally, the professional category does not apply to all professions; enforcement is arbitrary.

Continuing, Mr. Godwin said staff has indicated concern with the impact to revenues. He pointed out that Council has made changes before that negatively affect revenue when it is the fair thing to do. He pointed out that the purpose of the occupational license is to ensure that a business is in compliance with all zoning codes and ordinances before it is opened. It is then used as a tool for the business to stay in compliance. The occupational license fee should simply cover the cost of administering the program. He concluded by asking Council to support all of the changes.

Mrs. Poole asked how many citizens served on the Equity Study Commission (created by Council in 1995 to review and make recommendations about the city's occupational license tax rates and structure). Director of Finance Amy Elliott replied five, who represented a variety of businesses.

Mr. Godwin questioned why professionals are treated differently than other types of employees. Council Members E. Palmer and Walker replied because they are different – they are professionals.

Mr. Hill clarified that the occupational license is a tax on doing business in the community. It is not solely to regulate compliance with the different codes. We use it as a means to verify; however it is a tax provided for local jurisdictions as a way to generate revenue. Mr. Hill added that as a tax, the question is whether the assessment is fair. He noted that most cities have a separate classification for professionals because professionals are separate revenue generators.

Mr. Godwin stated that the recommendations of the Equity Study Commission should not be cast in stone and continue forever. He stressed that the professional category is not a fair tax. Additionally, because other municipalities do it this way is not the best argument either. He pointed out that Pinellas County does not have a professional category.

Mayor Buckley pointed out that in 1995, the rate for the professional category was reduced. He noted that in the past six years, Mr. Godwin is the only person who has opposed this. He concluded by saying from a revenue standpoint, he cannot agree with eliminating this category.

Mrs. Walker stated that each professional needs to be licensed under their respective category; therefore, she cannot support the elimination of the professional category.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Moved by Walker/Poole for approval of Ordinance No. 2001-37 with no change to the professional category. Motion carried. Vice Mayor Palmer voted nay.

19. ORDINANCE NO. 2001-45 (CU-2001-08): (Public Hearing/First Reading) A proposed ordinance for a conditional use to allow for the consumption of alcohol on premises (John's Alibi) located at the northeast corner of U. S. 1 and Creel Street in the Downtown Eau Gallie area. (Owner, Jack Barthole and applicant, John Romaker) (P&Z 8/16/2001)

Attorney Gougelman read the ordinance by title.

Mrs. Braz briefed Council. The site has operated as "John's Alibi" for less than one year. Before John's Alibi, the property was operated by the "All American Bar and Grille" and prior to that the site was operated as a bait shop and convenience store.

The property has an adopted land use of Commercial and is zoned C-2 (General Commercial). U. S. 1 is located to the west, Creel Street to the south, a former motorcycle shop to the north, and residential uses to the east. The City Code requires a conditional use for the consumption of alcohol on the premises when the use is not associated with a restaurant or hotel.

The business operator was cited by the Code Compliance Division for operating a bar without a conditional use. No action is being taken until the conditional use issue is resolved. The bar also serves food; however, less than 50% of sales are the result of the food portion of the business. The site contains seven marked but non-conforming parking spaces. These spaces require backing into the Creel Street right-of-way. This parking design has been used on the site for many years, probably when the house originally was converted to a business. The 1,275 square foot structure was constructed in 1952 before U. S. 1 was relocated from Pineapple Avenue to Magnolia Avenue. Other than the non-conforming use and parking and landscape buffer along Creel Street, the site conforms to the land development regulations.

The site has vehicular access from Creel Street. The business now contains 23 indoor and 15 outdoor seating spaces. The Code requires one parking space for each two seating spaces or one space per each 65 square feet of floor area. The seven existing parking spaces would permit no more than 14 seating spaces unless the applicant were able to acquire Code-complying off-site parking. The business is licensed for 49 seats. Pedestrian access is provided from both the U. S. 1 frontage and Creel Street frontage. The business contains a Code-complying sign along U. S. 1. This proposed conditional use does not involve expanding the use.

According to the owner, the bar operates Monday through Thursday 9:00 a.m. – 9:00 p.m., Friday 9:00 a.m. – 12:00 a.m., Saturday 9:00 a.m. – 9:00 p.m. and Sunday 1:00 p.m. – 8:00 p.m. City Code permits businesses that serve alcohol to operate from 7:00 a.m. – 2:00 a.m. Monday through Saturday and 1:00 p.m. – 2:00 a.m. on Sunday.

The original discovery that the site was operating in violation of the City Code was determined when the city received complaints about noise. A noise test was performed

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

during regular operating hours during a special event; however, the results are inconclusive. The test indicated that substantial noise was coming from traffic along U. S. 1. The bar is popular with motorcyclists and may be one of the reasons for the noise complaints.

Since no expansion is proposed for the site the applicant is not required to upgrade the site to comply with existing Code. However, the area used for outdoor seating should continue to be fenced and no reduction in landscape area should be permitted unless such designs comply with Code. This project is exempt from concurrency review.

The Planning and Zoning Board recommended denial based on the complaints by area residents, primarily about noise, and that the preexisting substandard parking provided at the site is injurious to the neighborhood. The board also indicated that the use is not a legal use since the property is being used as a bar.

The City Attorney has reported that the Florida Supreme Court has stated that if an applicant demonstrates that a conditional use application meets the standards in the City Code, then the burden of proof shifts to opponents of the application and the city to prove that the contrary is true and that the proposed conditional use is adverse to the public interest.

By applying the Florida Supreme Court's ruling, in order to strictly follow the Code, not only must the request for the conditional use comply with site plan requirements in Appendix B, Article XX (Site Plans), but also Article XII (Use Districts), and Article XV (Granting Conditional Uses). Specifically, the criteria which must be met, by factual evidence, is specified in subsection (2) and (3).

Subsection (2) code says :

"No conditional use shall be recommended by the Planning and Zoning Board, nor granted by the City Council, unless a determination be made that the conditional use requested will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the general purpose of this (the zoning) ordinance. In making this determination the Planning and Zoning Board and the City Council shall take into account the character and use of adjoining buildings and those in the vicinity, the number of persons residing or working in such buildings or upon such land and traffic conditions in the vicinity."

Essentially this provision requires that the proposed use and site plan must be "compatible" with the surrounding neighborhood.

Subsection (3)(a) permits the applicant to provide a scaled dimensioned sketch plan 8" x 14" which indicates the location of parking, landscaping (areas), external structural changes, and ingress/egress points.

The parking, landscaping and ingress/egress areas on these are shown on the site plan survey. No addition or expansion is proposed for the site and the use is the same as has

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

been used for many years. The use of the property has not lapsed so the non-conforming provisions of Article XI cannot be applied to the site.

Thus, the compatibility requirement is the crucial issue in this application. Council should attempt to determine if evidence provided in the agenda package and at the public hearing supports this concern. At the Planning and Zoning Board meeting, there was testimony given by neighbors about noise and other issues. Council should look to see if the source of the problems was actually from John's Alibi or that such issues could not be adequately addressed through Code Enforcement notification or action.

At the Planning and Zoning Board meeting nothing was presented by the residents about any traffic problems caused by the pre-existing parking arrangement, but this was considered by the board as a contributing factor as to why the use was injurious to the neighborhood. The Planning and Zoning Board felt that the use is not a conforming use (thus the request for a conditional use). The area residents' comments seemed to be the basis used by the board to determine that the use is detrimental to the surrounding area. However, the residents apparently did not provide any direct evidence that what they said was attributable to John's Alibi.

The Planning and Zoning Board recommended denial. Should Council conclude to follow this recommendation, specific findings from the evidence should be cited. The Planning and Zoning Board's findings as represented in the minutes were:

- "...the current use of the property has never been legal and there appears to be objective evidence that it is detrimental to the surrounding area.
- "...the non-conforming parking is a contributing factor."
- "...on citizen complaints and substandard parking, and based on this information, the use will be injurious to the neighborhood."

Should Council decide to grant the conditional use, the Planning and Zoning Department has recommended the findings listed in the agenda package along with the following conditions:

- a. Approval is subject to the site plan survey prepared by Will E. Powell, dated December 17, 1991. Any expansion of the bar by increasing the number of seats or floor area by more than ten percent of the existing building size shall require the applicant to apply for an amendment to this development order.
- b. All outdoor seating and congregate areas shall be fenced with an opaque fence no less than six feet in height and comply with the requirements of City Code, Appendix D, Chapter 9, Article II.
- c. The applicant shall be responsible for keeping the adjacent alley clean of debris, including any trash and overgrown vegetation.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Mr. Contreras asked if the applicant has agreed with the stipulations. Mrs. Braz replied that she has not discussed them with him directly; however, she has not heard that he is not in agreement.

A brief discussion followed regarding the right-of-way use agreement for the motorcycle shop that appeared on the last agenda.

Mr. Palmer asked how many parking spaces currently exist. Mrs. Braz replied seven. She added that if the business operates as a restaurant, 13 spaces will be required and as a bar, 19 spaces will be required.

Mayor Buckley opened the public hearing.

Wanda Drye, 813 Orange Street, Melbourne, spoke in support of the request. She stated that she feels safe at John's Alibi. Mr. Romaker has a code of honor in his establishment. She added that people ride bikes or walk to the business; therefore, the number of parking spaces discussed aren't needed. She asked Council to grant the request.

John Romaker, applicant, referenced the packet of information he distributed to Council. He discussed the letter dated April 5 to Peggy Braz from Carol McCloud. The letter indicates that no food is sold at the bar. He disputed that statement and said he has the books available to show that he sells food. Additionally, he noted that his occupational license indicates that the business is a "bar and grill." The city opted to issue the license as a restaurant. He added that ignorance of the law is no excuse, but he did not know that 51% of his sales needed to come from food.

Mr. Romaker referenced the comments made at the Planning and Zoning Board meeting regarding "undesirables" and "atmosphere of bikers." He stated that this is slander against a group of people and the Florida Constitution provides that all persons are equal before the law. He questioned why his business would be okay as a restaurant but is not okay as a bar.

Continuing, Mr. Romaker discussed the police reports from John's Alibi for the past year. He pointed out that 90% relate to noise complaints. He referenced the reports for the year prior to his ownership and stated that the business was a "battleground." Additionally, he submitted reports for three establishments around him for the same time period. Comparing his business to the other establishments, Mr. Romaker said he is running a church. He agreed that he had a noise problem. However, in an effort to co-exist with his neighbors, he would turn down the music until it was satisfactory with the police and the complainant.

Mr. Romaker discussed the three special events held at John's Alibi this year. He noted that the city conducted noise monitoring on a date that the business was closed. The meter registered 62.5 decibels and the City Code allows 65. He stressed that when the business was closed, it was almost at the limit. Additionally, other readings taken show that he did not exceed for more than 10 minutes at a time the 10 decibels over level that the current Code allows. He repeated that although he was within Code, he took action to reduce the

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

noise when complaints were received.

Mr. Contreras discussed the police reports and the noise readings that were taken by the city's noise consultant. He noted that the consultant has mentioned that the background noise needs to be taken into account when noise levels are conducted. He asked the City Manager if this is a case where timing is everything.

Mr. Hill explained that the consultant was asked to take readings near noise generating establishments so a comparison can be made when the new Code is being considered. He added that the new Code will be crafted to allow for better control and discernment in the types of noise and frequencies. He agreed that the noise consultant found that the background noise contributes to the overall disturbance; however, this is a separate issue from the band. However, the report clearly indicates that noise is a general problem in the area.

Mayor Buckley asked Mr. Romaker if he agreed with the stipulation regarding the opaque fence. Mr. Romaker said yes and added that he has already met that requirement. He reported that he eliminated seats in the bar to meet the parking space requirements.

Mrs. Poole asked Mr. Romaker if his business is open mornings. Mr. Romaker discussed his "Plan B", which is to meet the 51% of sales from food requirement, and stated that he opens for breakfast at 4:00 a.m. He listed the various menus he offers in response to Mrs. Hand. He added that he is working on meeting the 51% requirement.

Mrs. Palmer asked if he would be agreeable to no outdoor bands and limited hours. Mr. Romaker said he would like to have the option of conducting up to six special events per year (per the city's special activity permitting process). He stated that he sponsors events for causes in Brevard County.

Mrs. Hand asked if only beer and wine are sold and Mr. Romaker replied yes.

Attorney Gougelman stated that everyone recognizes that the applicant has taken steps to work on the compatibility issue and limit the possibility of noise complaints. He explained for the applicant that Council is concerned that if a conditional use is granted, the business may be sold in the future. The conditional use would stay in effect, yet we have no idea what the next operation would bring.

Debbie Gentry, 336 Patrick Circle Melbourne, stated that she is former U. S. Army and a pediatric nurse. She commented that she is comfortable going to John's Alibi. She discussed the special events held at the bar for good causes and added that she feels John has improved the area since he has owned the bar.

Ann Pirolo, 1576 Avocado Avenue, said she lives directly behind the bar. She reported that her husband is sick and due to the noise, he had to leave town. She said that she has to live with her sister three miles away because she is scared - there are undesirables. She stressed that she cannot take any more of the noise, yet she can't leave the area because of her work. She concluded by saying this is not an appropriate place for a bar.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Mayor Buckley pointed out that the applicant is applying for a permit to sell alcohol. If they don't receive that, they can still operate as a restaurant. Ms. Pirola replied that she doesn't want them to close; however, she does not want to be disturbed.

Mrs. Palmer asked if the situation has changed since Mr. Romaker became the owner. Ms. Pirola replied that the residents see a lot of prostitutes and in her opinion the situation has not changed. She added that she sees undesirable people. Mrs. Hand recommended that the residents contact the Police Department when they see prostitutes.

Attorney Gougelman asked if the prostitutes are seen at John's Alibi or on the street. Ms. Pirola said they pass by on the street.

Noel Randall, 2515 Pepper Avenue, stated that he is a Deputy Sheriff. He reported that he has known John for about 1 ½ years. Before he purchased the bar, Mr. Randall knew Mr. Romaker through special events. He said that because he is a Deputy, he has to be careful where he goes. He added that he feels safe at John's Alibi and his wife will frequent John's Alibi without him. He noted that she goes there particularly because of John. Mr. Randall concluded by saying Mr. Romaker does not allow riff raff at John's Alibi.

Mike McCloud, 1599 Avocado Avenue, stated that he has been in the neighborhood for 20 years plus and he has seen nothing positive or productive from John's Alibi Bar.

Carol McCloud, 1599 Avocado Avenue, stated that she has lived in the area for 21 years and she has seen the neighborhood deteriorate. She commented that John's Alibi has not helped. She has seen undesirable people, unkempt people, and prostitutes. She and her neighbors are diligent at watching what happens in the neighborhood. The majority of people who go into John's Alibi are the people walking the street.

Continuing, Ms. McCloud discussed the problems she encountered when the bar had bands. She noted that even without the outdoor music, there are still noise problems with the motorcycles. On Sunday afternoon, the motorcycles start about every half hour and it is disturbing the entire afternoon. People leave the bar drunk. The residents are asking the city to help control problems in the old Eau Gallie area. There are seven bars in that neighborhood and they don't need one more. She asked Council to consider this and help stop crime in the neighborhood.

Sherry Bennick, 1279 Houston Street, stated that she is the librarian at Ramshur Towers. She referenced her disability and stated that the first time she and her guide dog went to John's Alibi, they were welcomed. John's Alibi has a special chair for her at the bar. She added that she feels the staff and customers are her friends and family. John's Alibi helps those who are less fortunate. She expressed concern that these are the people who the neighborhood is claiming to be undesirable. She concluded by saying there are no problems in the bar and it is safe. She challenged the record of the other establishments (bars) in the area.

Ms. Bennick confirmed for Mrs. Walker that she occasionally eats at John's Alibi.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Joseph Solometo, 538 Teek Drive, Melbourne, said he knows John is an upstanding guy. He reported that he visits John's Alibi with his kids and there are no problems. He added that he has never seen prostitutes in the bar.

Margaret Dehnard, 1475 Birch Street, Melbourne, stated that she eats at John's Alibi. She added that the place is safe and she has never seen trouble. She reported that she previously owned a tavern in another state. Ms. Dehnard said the owner has made improvements and is working with the community the best he can. She has not heard evidence indicating that there is trouble coming from this establishment. She said she understands the neighbors' frustrations with the neighborhood being bad; however, the problems are not associated with this establishment.

Cindy Pedrick, 1901 Villa Espana Trail, Melbourne, stated that she works at John's Alibi and has been a resident of Melbourne for 40 years. She reported that she has never had a problem with violence. John is a respectable man; he does not allow drugs and undesirable people. She asked Council to take the time to visit the bar and stated that the employees need their jobs. She concluded that the business did not bring anything into the neighborhood that wasn't there before.

Jim Roberts, 1164 Arnold Drive, Melbourne, stated that half the people who go to John's are retired military, deputy sheriffs, firemen, attorneys, and people fighting to keep drugs out of the United States. He referenced the money raised at the special events at John's Alibi for people in Brevard County. He asked Council not to judge him because he wears a black tee shirt and rides a motorcycle. Additionally, he added that issuance of the conditional use would be transparent to the neighborhood.

Russell Marquis, 3735 U. S. 1, Melbourne, stated there are a lot of nice people at John's. He added that it is not illegal to ride a motorcycle and the bikes in the area are not just from John's. He informed Council that it is so quiet (behind John's) that you could hear a pin drop. People go out back to read a book or talk and drug dealing and prostitution is not going on.

Richard Ungerer, 13 Dunham Street, Melbourne, reported that John's Alibi is great. He added that the problem is not the bar - it is the neighborhood. And, the area is a much better place because of John's.

Mr. Ungerer read and presented a letter dated August 28 from Kathy O'Sullivan, 1616 Avocado Avenue, Melbourne. Ms. O'Sullivan states that she lives about one-half block from John's Alibi and she has never encountered any undue noise or problems with the establishment.

Dennis Zeleznik, 1951 Tallpine Road, reported that he has a Master's Degree in business from the University of Florida. He has been in Melbourne since 1982 and owns his own business. He commented that he knows that John is retired military and DEA agent and he does not put up with guff. He takes care of problems.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Betty Moore, 2552 Pineapple Avenue, block captain representing the Eau Gallie Neighborhood Watch Group, stated that the meeting has gotten off of the prime problem. The place is illegal; it is not properly licensed. There is no parking at John's. Customers use the computer parking lot and the spay/neuter clinic parking lot. The business does not meet Code.

Continuing, Ms. Moore said the residents are not saying there are prostitutes in John's Alibi or that he is dealing drugs; however, those problems exist in the area. She pointed out that the people speaking in support do not live in the neighborhood. Motorcycles do not purr and when a group leaves at the same time, it is not quiet. She asked Council to take into consideration the police reports and the noise complaints. It is not a super family bar and it is not a restaurant. The residents want the problem taken care of.

Recessed: 11:06 p.m.
Reconvened: 11:14 p.m.

Don Hylland, 608 Oxford Avenue, Melbourne, said that he has lived here for 45 years. He noted that a motorcycle will crank up and be gone in 20 seconds. He added that the residents ought to be thanking John for cleaning up the area. He listed the events he and other customers have participated in and asked what the area residents have done for their community, other than complain.

Robert Gault, 154 Hollywood Boulevard, West Melbourne, stated that there is more law enforcement in that bar than any other bar in the county. He asked that the request be granted.

David Perry, 1901 Villa Espana Drive, said he has known John for almost a year and he has seen what he has done with the neighborhood. He added that John Romaker takes care of kids and people in need.

Debbie Babcock, 6233 Hall Road, West Melbourne, said she is a musician and used to work at John's; however, the elimination of live music has cut out her livelihood. Ms. Babcock reported that the customers at John's are movers and shakers; they do for their community. She added that she doesn't see any neighborhood groups, other than bikers and undesirables, doing for their community. She asked Council to grant the request so John Romaker can continue operating.

Ron Wilson, 2588 Sarno Road, reported that he moved to Florida in 1963 and has paid taxes since then. He added that the community is deteriorating because of the people moving into the area – not because of the location of John's Alibi. He asked Council to give John a chance and not act on "what ifs."

Mrs. Walker asked the occupancy, as allowed by the fire code, of the establishment. Mr. Romaker replied 49.

Council Member Contreras made a motion to grant the conditional use with the conditions as stated. Mrs. Palmer asked if the motion included the limited hours. Mayor Buckley

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

pointed out that those are the bar hours; the business is open beyond those hours. Mrs. Palmer read the limited hours (as outlined in the agenda report) and asked Mr. Romaker if he agreed. Mr. Romaker replied yes. Mrs. Braz clarified that the request is for a conditional use for alcohol. The business may open any time as a restaurant.

Moved by Contreras/C. Palmer for approval of the conditional use (Ordinance No. 2001-45).

Mrs. Hand stated that she cannot support the motion because she has to look out for the folks who live in the area. Many of the people who spoke in support do not live nearby. The residents want a good quality of life and our community owes that to them. Additionally, if the restaurant/bar does not make it, who knows what will come in (with the conditional use in place) and make life miserable for the residents.

Mrs. Palmer agreed; however, she pointed out that the establishment is already open and will not close if the conditional use is denied. They will simply stop selling beer and wine, but the noise will remain the same.

Mr. Palmer referenced the lack of parking and the fact that customers are using surrounding parking lots. There are constant noise complaints and the police reports indicate this. The property has been illegally operating for a long time. As a restaurant, the beer sales will go down and the motorcycles will go away. He concluded by saying the operation is a detriment to the neighborhood.

Mrs. Poole pointed out that a lot of motorcycles coming in or leaving at the same time do generate a lot of noise. Homes back up to the business and that situation will always cause problems. She stated that Council must consider the people who live in the neighborhood 24 hours a day. She knows this isn't an undesirable bar; however, she cannot support the request because of the people who live in the community.

Mrs. Walker applauded John Romaker and his customers for the good deeds they have accomplished. She added that she is not here to question motives; however, she cannot support the request.

Mayor Buckley stated that he is in favor of the conditional use.

Mrs. Palmer said that staff called to her attention that if the conditional use is denied, the applicant will have to simply sell more food in order to continue selling beer. She noted that approval of the conditional use would allow for stipulations to be attached. She added that she does not know why the city allowed this condition to go on so long with the past owner (American Bar) and she pointed out the noise generated by Conchy Joe's and Dr. Joe's. She stressed that the property is commercial and is located on U. S. 1.

Mayor Buckley asked if Council had any disclosures. Mr. Contreras said he spoke with Wayne Stalls on August 25, the Past President of ABATE of Florida, who spoke in support of the request. Mr. Palmer said he has driven by John's Alibi numerous times and noticed the lack of parking. Mrs. Poole said she received a call from Mrs. Moore, but she did not talk with her. Mrs. Hand said she spoke with Betty Moore during the break.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

The question was called. The roll call vote was:

Aye: Contreras, C. Palmer, and Buckley

Nay: E. Palmer, Poole, Walker, and Hand

Motion failed.

Moved by E. Palmer/Hand to deny Ordinance No. 2001-45. The roll call vote was:

Aye: E. Palmer, Poole, Walker, and Hand

Nay: Contreras, C. Palmer, and Buckley

Motion carried.

20. ORDINANCE NO. 2001-46 (CU-2001-09): (Public Hearing/First Reading) A proposed ordinance for a conditional use to allow for the consumption of alcohol on premises (Wid's Bar) located at the north side of Sarno Road, approximately one-quarter mile east of Wickham Road. (Owner, Leonard Lewis; applicant, Wid's Place, Inc.; and representative, Wid T. Bell) (P&Z 8/16/2001)

The attorney read the ordinance by title and Mrs. Braz reviewed the agenda report.

The site has been used for a bar and pool hall for many years. Food is also available; however, the primary sales receipts are from bar services/sales. The bar previously operated under a different ownership and name (Lenny's Pub). The 2,400 square foot building was constructed in 1964. The property has an adopted land use of Commercial and is zoned C-2 (General Commercial). Sarno Road is located to the south, Jimmy Moore Park across the street, a retail establishment is to the west and north (Chili's driveway and a retail use behind the bar, both zoned C-2), and vacant commercial property to the east (C-2 zoning)

The City Code requires a conditional use for the consumption of alcohol on the premises when the use is not associated with a restaurant or hotel. The site is not within 450' of a church or school. The existing bar is a grandfathered, non-conforming use. The business operator needs to obtain a conditional use because the bar is proposed to be expanded.

The site contains 29 marked but non-conforming parking spaces. Additional parking is provided on the adjacent property. This parking design has been used on the site for many years, probably when the building originally was constructed. There is no landscape areas provided on the site but there is sufficient area to provide the Code-required landscaping. The site contains no retention and contains completely impervious surfaces. St. Johns River Water Management District regulations do not require retrofitting the site for drainage. The city would not require retrofitting for drainage unless the site was completely redeveloped. Other than the proposed expansion of the non-conforming use, the non-conforming

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

landscape and parking and lack of a sidewalk, the site conforms with the city's land development regulations.

The site has vehicular access from Sarno Road. The business now contains 48 seating places. Code requires one parking space for each two seating places or one parking space per each 65 square feet of floor area. The estimated 39 spaces available on this site and on the improved parking on the property adjacent to the bar, owned by the applicant, will allow enough parking for 78 seats. The owner proposes to add up to 48 new seats with the expansion for a total of 96 seats. If this is provided, 48 parking spaces will be required to meet Code. Code-complying pedestrian access does not exist along Sarno Road. Adequate parking, a sidewalk, and improved landscaping will be required if the conditional use is approved.

According to information provided by the applicant, the bar operates Monday through Saturday from 10:30 a.m. – 2:00 a.m. and Sundays from 1:00 p.m. – 2:00 a.m. Code permits businesses that serve alcohol to operate from 7 a.m. to 2 a.m., Monday through Saturday and Sunday from 1 p.m. to 2 a.m.

The applicant has been granted an exemption from having to provide an Environmental Impact Assessment report since the site is totally developed and no known endangered or threaten species occupy the property.

The Planning and Zoning Board and staff recommended approval of CU-2001-09 subject to the findings listed in the package and the following conditions:

- a. The plan of development shall be consistent with the site plan survey prepared by Thomas W. Quesnel, dated July 10, 2001. The applicant shall provide Code compliant landscaping along the property boundaries and for interior parking spaces.
- b. The applicant shall obtain a permit from Brevard County and construct a five-foot wide sidewalk along the Sarno Road frontage.
- c. The applicant shall demonstrate that sufficient parking can be provided in accordance with City Code, Appendix D, Chapter 9, Article V. (This may include off-site parking.)
- d. Any additional expansion of the bar by increasing the number of seats shall require the applicant to apply for an amendment to this development order.

Wid Bell, applicant, explained that he is expanding to the other part of the building. He said he has no problem with the parking requirements and the stipulations. He informed Council that he also owns 4 ½ acres surrounding the bar.

In response to Mrs. Walker, Mrs. Braz explained that if the applicant provides any additional paving, St. Johns River Water Management District may require him to provide a retention area.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Moved by Hand/Poole for approval of Ordinance No. 2001-46 with the noted stipulations. Motion carried unanimously.

21. ORDINANCE NO. 2001-47 (Z-2001-912): (Public Hearing/First Reading) A proposed ordinance to rezone a 7.0445-acre parcel from C-P (Commercial Parkway) to C-2 (General Commercial) located at the northeast corner of Airport and NASA Boulevards and to rezone a 7.28-acre parcel from M-1 (Light Industrial) to C-2 (General Commercial) located at the southeast and northeast corners of Airport and NASA Boulevards. (Owner, City of Melbourne/Melbourne Airport Authority and applicant/representative, Mike Jaffe, Global Technology Center) (P&Z 8/16/2001)

Attorney Gougelman read Ordinance No. 2001-47 by title. Mrs. Braz reviewed the agenda report.

Mrs. Poole questioned why the applicant is not proposing C-P. She noted that C-P provides for greater setbacks. In this area, green area will need to be preserved, especially since so many buildings are proposed to be constructed.

Mrs. Braz said the applicant does not want huge front setbacks; they want to maximize use of their property. The development needs to be under one zoning district. Additionally, Mrs. Braz informed Council that the applicant had originally applied for a conditional use, but postponed that until their plans are finalized.

Mrs. Poole stated she was shocked when she learned that they were requesting the TDC provide tax dollars to help with construction.

Mayor Buckley called for disclosures. He noted that this item was brought up at the Airport Authority meeting and he along with Council Members E. Palmer and Hand heard the request to make the development C-2.

Mayor Buckley opened the public hearing. The applicant was not present.

Moved by Hand/Contreras for approval of Ordinance No. 2001-47.

Due to the hour (11:57 p.m.) Mayor Buckley asked Council to consider continuing with the meeting for several more items. By consensus, Council agreed.

Moved by Poole/Walker to postpone Ordinance No. 2001-47 until October 9 to allow the applicant time to return with the conditional use request. Motion carried. (Mrs. Hand voted nay.)

22. ORDINANCE NO. 2001-48 (DR-2001-03): (Public Hearing/First Reading) A proposed ordinance to de-annex a .77-acre parcel from the corporate boundary of the city located on the north side of East Eau Gallie Boulevard, west of SR A1A and east of South Patrick Drive. (Requested by Eau Gallie Development, LLC)

Attorney Gougelman read the ordinance by title and Mrs. Braz briefed Council. The

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

property was part of the City of Eau Gallie before the merger of Eau Gallie and Melbourne in 1969. The property is a portion of the former ABC liquor store constructed in 1971, which has been vacant for many years. Much of the parking lot surrounding the north side of the building is located in the City of Indian Harbour Beach while the parking area and additional vacant land to the east is located in the unincorporated portion of Brevard County.

The property has an adopted land use of Commercial, is zoned C-2 (General Commercial) and is the only portion of the city located north of Eau Gallie Boulevard between South Patrick Drive and SR A1A. The property is contiguous with much larger parcels to the north and east that the owner intends to develop as a single project. The problem is that the three parcels are located in three separate jurisdictions, the City of Melbourne (.77 acres), the City of Indian Harbour Beach (12.2 acres), and Brevard County (1.64 acres). Only the Melbourne parcel contains a building. Attempting to develop the property under three separate jurisdictions would create administrative complexities and required different design standards.

Upon de-annexation from the City, the applicant intends to annex the property and the adjacent property located within the unincorporated area into the City of Indian Harbor Beach. The property has an assessed value of \$520,000 and generates \$2,351.86 in ad valorem tax revenues for the city. Since the site has been vacant for many years no utility taxes from franchise fees or sales taxes have been collected. If de-annexed, and upon redevelopment, the water rates for the new development will be ten percent higher than if located in the city. The property is clearly in need of improvement. If the property were redeveloped in the city, Code required landscaping and parking would have to be provided and a sign complying with scenic corridor requirements would have to replace the non-conforming sign.

If developed within Indian Harbour Beach the site will have more stringent sign controls, equally or more restrictive landscape requirements, and a required sidewalk. The Indian Harbour Beach regulations also prohibit billboards. (One will be removed on the adjacent unincorporated parcel as part of the project.) Indian Harbour Beach intends to consider approval of a request to construct a mixed-use commercial and residential development on the combined 14.6-acre property. This is consistent with the city's Future Land Use Element advisory land use for the property. Staff would not support de-annexation of this property if the owner intended to re-develop or have the property remain in the unincorporated area.

The Planning and Zoning Board and staff recommended approval of the request based on the findings as listed in the package.

Council Member Contreras left the Council Meeting at 12:00 a.m.

Hugh Normile, attorney representing the applicant explained the request and noted their desire to have an overall development located in one jurisdiction. He informed Council that they have filed an annexation request with Indian Harbour Beach.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Mrs. Poole asked if the applicant would consider annexing the entire property into the City of Melbourne. Attorney Normile said they do not wish to do that. Indian Harbour Beach has indicated a willingness to adopt a zoning ordinance to accommodate the commercial/residential they are seeking to develop. The applicant believes it makes more sense to go this route.

Moved by C. Palmer/Walker for approval of Ordinance No. 2001-48. Motion carried.
(Mrs. Poole voted nay and stated that she cannot support giving away property.)

23. RESOLUTION NOS. 1711, 1712, AND 1713: Proposed resolutions to convey land and easements to Brevard County to widen Croton Road.

- a. Resolution No. 1711: A proposed resolution to convey Parcels 103 and 107 for right-of-way purposes.
- b. Resolution No. 1712: A proposed resolution to convey Parcel 800 defined as a drainage easement.
- c. Resolution No. 1713: A proposed resolution to convey Parcels 703 and 712 as temporary construction easements.

Attorney Gougelman read each resolution by title. These are proposed resolutions to convey land and easements to Brevard County so that Croton Road can be widened. The County's widening project will extend from north of Aurora Road to north of Lake Washington Road. To accomplish the project, county staff and consultants have identified several conveyances. A resolution is provided for each of three different conveyances.

Resolution No. 1711 defines the conveyance by deed of two small parcels of land that the county requires for right-of-way purposes. Resolution No. 1712 defines the conveyance of a drainage easement required by the county. Resolution No. 1713 defines the conveyance of two temporary construction easements required by the county during the construction period only.

This is an important road widening project that will improve the flow of traffic in this north/south corridor. The city has requested Brevard County prioritize and appropriate funds to accomplish the improvements. The project will reduce traffic congestion at Johnson Junior High and Croton Elementary schools. The conveyances are needed to accomplish the project which is to the public's benefit.

Moved by Hand/E. Palmer for approval of Resolution No. 1711. Motion carried unanimously.

Moved by E. Palmer/Hand for approval of Resolution No. 1712. Motion carried unanimously.

Moved by Poole/Hand for approval of Resolution No. 1713. Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

24. COUNCIL ACTION RE: A request for renewal of Interlocal Agreement with Brevard County for administration of the City's Stormwater Utility for an additional two years.

This is a proposed renewal of our Interlocal Agreement with Brevard County for administration of the City's Stormwater Utility. The current agreement expires on September 30, 2001. No changes in the previous agreement are proposed other than the expiration date. The county's coordination with the city has been very favorable and has allowed for cost effective operation of the City of Melbourne's program without the addition of staff.

The County's Stormwater Utility is managed by the Director of Surface Water Improvement, Ronald E. Jones, P.E. The county also manages the programs for the City of West Melbourne and the Town of Malabar.

The cooperation between these various agencies has resulted in a more regional watershed-wide approach to stormwater resulting in more cost effective management.

Having a Stormwater Utility in place has not only provided a much needed revenue source, but has given the city priority treatment in obtaining grants through various agencies. Thus far since the Utility's inception, grants have been obtained for Dove Street (\$102,000), South Hickory Street bank stabilization (\$50,000), city-wide structure inventory implementation as part of the Master Plan (up to \$35,000), and \$40,000 for installation of sediment control devices (baffle boxes) at two locations. In addition, the City's Stormwater Utility is participating jointly in the Parkway Drive/Wickham Park drainage improvement project for which a \$400,000 grant has been obtained by the county. These figures compare favorably with the annual cost to the city of \$85,000-\$95,000 to have the county administer the program.

Moved by Poole/C. Palmer for renewal of the Interlocal Agreement with Brevard County for the county's administration of the City's Stormwater Utility Program for an additional two years. Motion carried unanimously.

Mr. Hill stated that Mr. Palmer had asked about the amounts being paid to Brevard County. The costs include \$90,000 for administrative fees, \$18,000 to the Tax Collector, and \$30,000 for direct costs (additional services). This is the same as in other years.

Ron Jones, Brevard County, reported that the administrative fees are based on the number of participants in the program.

Mr. Hill commented that we need to convince other jurisdictions to join the program.

Mr. Jones informed Council that of the \$30,000 budgeted for additional services, they have only billed about \$8,000 this fiscal year. Additionally, there is no markup on the direct costs.

25. COUNCIL ACTION RE: Discussion of nuisance abatement strategies. (Requested by Council Member Ed Palmer)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Due to the hour, the following motion was made:

Moved by Walker/Hand to postpone this item until the September 25 meeting. Motion carried unanimously.

26. COUNCIL ACTION RE: Discussion of increased retirement benefit option for municipal elected officials. (Requested by Council Member Hand)

From the agenda report: The city has been advised by the State of Florida Retirement System (FRS) that in the 2001 Legislative Session, Senate Bill 2 was passed which included an option for cities to increase retirement benefits for Council Members.

FRS cities now have the option of placing their elected officials into the FRS "Elected State Officer Class." The option must be exercised prior to December 31, 2001 and adopted by either resolution or ordinance of the City Council.

The Elected State Officer Class would be an increase in retirement multiplier from 1.62% to 3.00%, and a reduction of vesting time required from 10 years to 8 years. The increased benefit would require additional contributions. The city's current contribution rate for Council Members is 7.30% of pay. This would increase to 15.14% of pay. Three Council Members are covered by the city's local plan. The local plan's current contribution rate is 11.80% of pay. That plan would have to adjusted to provide similar benefit to FRS should Council desire to implement the change.

The agenda package includes a calculation of the estimated costs to implement the change. The additional cost is estimated to be about \$2,537 annually.

Mrs. Hand stated that it looks as if there would be an advantage to going with the new benefit option. She added that she needs a better explanation. Mrs. Walker agreed. Mr. Palmer stated that Council needs a briefing.

Mr. Hill explained that Council has until December to adopt the new benefit by ordinance. It is fairly straightforward – add the additional benefit or not. It changes the retirement multiplier and essentially, the cost is doubled. It is not a substantial amount, but it is an increase.

Moved by Walker/Hand to have the attorney prepare an ordinance providing for the increased retirement benefit.

Following a brief discussion, Council asked for specific examples of the benefit to be provided with the materials when this item returns.

The question was called. Motion carried unanimously.

27. COUNCIL ACTION RE: Consideration of the city's vacation leave accrual policy for non-union employees.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

From the agenda report: In 1987, the city adopted a two tiered vacation schedule for employees. Those who were hired after October 1, 1987 earn vacation leave at a rate less than those who were hired before that date. The change was made in the labor contracts in 1987 and extended to the non-union employees at that time.

The vacation accrual rates are as follows:

<u>Before October 1, 1987</u>			<u>After October 1, 1987</u>		
1-5	years	80 hours (10 days)	1-7	years	80 hours (10 days)
6-9	years	96 hours (12 days)	8-12	years	96 hours (12 days)
10-14	years	120 hours (15 days)	13-20	years	120 hours (15 days)
15+	years	176 hours (22 days)	21+	years	144 hours (18 days)

During the first few years the revised plan was in place there was little apparent difference and few employees directly effected. However, now as we go into the 15th year since the change, the differences in amount of time earned are becoming significant and the number of employees substantial.

There are 230 current non-union employees who were hired on or after October 1, 1987. Of that 230 employees, 73 employees would be impacted immediately by a change in this benefit. Of those 73 employees immediately impacted by this change, 26 have worked for the city between six and seven years and would move from 10 to 12 days vacation per year, while the remaining 47 employees have worked for the city between 10 and 12 years and would go from 12 to 15 days vacation per year upon implementation of this proposal.

The matter has been raised in discussions and during meetings with employees over the last couple years including the current negotiations with the Laborers and Police Unions.

Research by the Personnel Division shows that the city's vacation accrual rates (the post-1987 rates) are less than surrounding communities and others in the state. Even the pre-1987 rates are less than many others.

It would be appropriate for Council to consider revising the accrual rates for the non-union employees to equalize the accruals for employees hired after October 1, 1987 with those hired before that date. The estimated value of this proposal, based on the number of hours additional which would be earned by those effected, is \$21,000 for the first year. This amount will increase in subsequent years. Council can later consider extending this revision to the union represented employees as a part of the collective bargaining process.

It is recommended that Council approve revising the vacation leave accrual formula for non-union employees to equal the rates of the employees hired prior to October 1, 1987.

Mayor Buckley stated that he supports the change. He added that we should not have two different standards of benefits for the non-union employees.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 28, 2001

Moved by E. Palmer/Poole for approval of revising the vacation leave accrual formula for non-union employees to equal the rates of the employees hired prior to October 1, 1987 as recommended effective October 1, 2001. Motion carried unanimously.

28. COUNCIL ACTION RE: Board Appointments

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

Moved by E. Palmer/Poole to appoint Kimberly Meehan as a regular member and John Edmiston as the (second) alternate member. Motion carried unanimously.

Kim Meehan: 8/28/2001 – 5/3/2002
John Edmiston: 8/28/2001 – 6/7/2003

- b. Building Board of Adjustment and Appeals – one alternate member

Moved by E. Palmer/Poole to appoint Leon D. Leash as an alternate member. Motion carried unanimously. Term: 8/28/2001 – 12/13/2003; unexpired term, plus full two-year term.

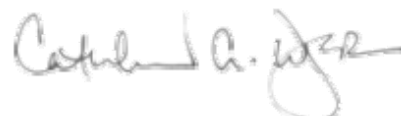
29. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

30. ADJOURNMENT

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

The meeting adjourned at 12:28 a.m.



City Clerk – 9/7/2001

Approved by Council: _____