

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
NOVEMBER 13, 2001

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

1. The invocation was given by Curtis Deming, Youth Pastor, Vineyard Christian Fellowship.
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
	Peggy Braz	Planning and Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

None.

5. APPROVAL OF MINUTES – October 23, 2001 Regular Meeting

Moved by Walker/E. Palmer for approval of the October 23 regular meeting minutes.
Motion carried unanimously.

6. CITY MANAGER'S REPORT

Mr. Hill reported that the city has reached a tentative three-year agreement with the PBA. He noted that he will distribute a summary of the changes. We anticipate that the PBA will conduct a ratification vote on Thanksgiving Day; therefore, the item will likely appear on the next Council agenda.

Mr. Palmer asked the amount of the Local Law Enforcement Block Grant (item 2). Mr. Hill said approximately \$200,000. He added that the vehicles, as approved by Council in the budget, will be additional and not replacements.

Mayor Buckley referenced staff's request to add consideration of Resolution No. 1730 to the agenda as item 9.1.

Moved by Hand/E. Palmer to add item 9.1 to the agenda. Motion carried unanimously.

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At this point, Mayor Buckley said the recommendation on agenda item 18 is for postponement until the evaluation of the title and the location of the easement have been completed. Mrs. Poole stated that Harry Goode has asked to say a few words before the item is postponed. Mayor Buckley declined and explained that if one person is allowed to speak, then everyone would have to be given an opportunity to speak.

Moved by Walker/Contreras to postpone consideration of Ordinance No. 2001-62 (item 18) until the evaluation of the title and the location of the easement have been completed. Motion carried unanimously.

7. PUBLIC COMMENTS

John Ritter, 1600 U. S. 1, representing the Space Coast Triathlon Club, thanked the Police Department and Office of City Clerk for assistance in the Battle of the Bridges Triathlon special event. He reported that the event was extremely successful and raised several thousand dollars for charity.

UNFINISHED BUSINESS

8. RESOLUTION NO. 1725: A proposed resolution supporting the Manatee Protection Plan developed by the Florida Fish and Wildlife Conservation Commission (FWC). (Postponed by Council 10/9/2001)

Attorney Gougelman read Resolution No. 1725 by title.

From the agenda report: Council postponed action on this item at the October 9 meeting until after the administrative hearings were conducted. When the item was postponed, the following motion was on the floor: *“Moved by Poole/E. Palmer for approval of Resolution No. 1725.”*

Hearings were conducted September 24-28 and October 22-26, 2001 in Viera. All court proceedings formally concluded on October 29. Once a transcript is finalized, all parties will have a 20-day period to submit proposed orders to the judge. It is anticipated that the judge will enter a final order in January or February 2002.

Dr. Ron Pritchard, President of Citizens for Florida’s Waterways, and one of the five residents who was a petitioner, asked Council to further table consideration of this item. He reported that he believes there will be significant changes to the plan based on the two weeks of testimony. He added that it would be premature for the city to reaffirm a plan, which will likely be significantly changed. Dr. Pritchard explained that the petitioners clearly showed the court that the FWC did not follow state statutes in drafting the plan and intentionally ignored data. The FWC staff relied on relatively inaccurate telemetry data and promulgated rules based more on the agreement with the Manatee Club used to settle the lawsuit.

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Continuing, Dr. Pritchard said the data indicates that the manatee population is growing well – 5.5% per year. He stressed that his group advocates responsible manatee protection.

Mr. Pritchard responded to Mrs. Poole and explained how long he has been involved with this issue. He noted that he attended the first public hearing in 1994 and prior to that, was involved in the same type of issue in Broward County. He concluded by saying they are proposing a plan based on sound scientific data.

Mrs. Poole discussed the history of the protection plan and listed the organizations that support the plan. She noted that this is a simple resolution, which indicates the city supports the plan. She added that with this many organizations in support, she does not believe five people who are opposed will make a difference. She concluded by saying once the manatees are gone they won't come back. She asked Council for its support.

Mrs. Palmer said the item is controversial and is still in court. She commented that the groups that support the plan are animal rights groups. As an advocate of human rights, Mrs. Palmer said she recommends the item be further postponed.

Moved by C. Palmer/Contreras to postpone this item until the judge makes a ruling (January/February 2002). Motion carried. Mrs. Poole voted nay.

9. ORDINANCE NO. 2001-55: (Public Hearing/Second Reading) A proposed ordinance placing municipal elected officials in the Elected Officers' Classification of the Florida Retirement System (First Reading 10/23/2001)

Mr. Hill reported that FRS has made a ruling, which would allow for all Council Members to participate in the elected officers' class of FRS. If Council wished, the members who are in the local plan can be placed in FRS for purposes of the retirement benefit. That would avoid the problem of having to amend the local plan and would place all members under the same plan.

If Council wishes to proceed with placing all elected officials in FRS, item 9.1, Resolution No. 1730, would need to be adopted.

Attorney Gougelman read Ordinance No. 2001-55 by title, which places all Council Members in FRS. There were no comments from the public.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2001-55 as revised. The roll call vote was:

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

Nay: None

Motion carried unanimously.

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Added to the agenda:

- 9.1 RESOLUTION NO. 1730: A resolution reinstating membership in the Florida Retirement System for elected positions taking office on or after January 1, 1996.

The attorney read the resolution by title.

Moved by Hand/Walker for approval of Resolution No. 1730. Motion carried unanimously.

10. SITE PLAN APPROVAL (SP-2001-04/FLORIDA TECH STUDENT HOUSING): (Public Hearing) A request for site plan approval on an approximate 10.2-acre portion of the Florida Tech (FIT) campus in an I-1 (Institutional) zoning district, located on the west side of Babcock Street, south of Vida Way and Ruffner Road and east of Country Club Road. (Owner, Florida Institute of Technology; applicant, John Milbourne; and representative, Mike Hambleton, University Housing Services, Inc.) (Postponed by Council 10/23/2001)

The following letters were distributed to Council after the agenda package had been prepared: November 8, 2001 from D. Travis Proctor, President, Artemis International Technologies, Inc., in support of the site plan. November 12, 2001 from James P. Beadle, representing several homeowners in the Hickory Hills Subdivision, outlining several reasons why the site plan should not be considered. November 13, 2001 from Robert Zielinski, 15 West Vida Way, opposed to the site plan.

Mayor Buckley called for disclosures. Mr. Contreras said he had a conversation with Representative Mitch Needelman on October 20 in an attempt to schedule a meeting. The meeting was never held. Mrs. Poole said she spoke with Mr. Needelman to determine if he was able to attend the meeting. Mayor Buckley said he spoke with Dr. Lynn Weaver and James Johnson. They asked how they should express their views (both in favor) and the Mayor instructed them to send a letter to Council.

Ms. Braz briefed Council. At the request of the attorney representing nearby residents, this item was postponed by Council on October 23, 2001. Florida Tech's attorney concurred with the request.

This site plan for the apartment dormitories at Florida Institute of Technology was submitted by the applicant to address the problems that Council cited when they denied the previous site plan. The use of the property has not changed; however, significant changes were made to attempt to alleviate Council's concerns. These include drainage, site design and access.

Drainage: The drainage has now been engineered to meet the 100-year storm event. City Code requires engineering to meet the 25-year storm event. Additionally, the applicant considered the flood elevations that were proposed by Brevard County (but have not been adopted) which are more restrictive than the FEMA floodplain designations.

Site Design: The buildings have been arranged so that only a corner of the building

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faces the Hickory Hills Subdivision. Previously the site of the building faced the subdivision.

Access: There is no access to the site from Hickory Hills Subdivision.

The site plan complies with the Comprehensive Plan policies and Land Development regulations. The Planning and Economic Development staff provided the following findings to the Planning and Zoning Board:

1. The proposal is consistent with the Melbourne Comprehensive Plan, and in particular, the Future Land Use Element, Objective 1a, b, and g, Objective 2c, f, h, and i, Objective 4a and b, Objective 6a and c, the Traffic Circulation Element, Objective 2c, Objective 4c, e, and f, and Objective 6b, c, and j, the Housing Element, Objective 2a, b and d, the Infrastructure Element (Drainage Sub-Element), Objective 1a, b, c, e, f, and h, the Conservation Element, Objective 1a and c, Objective 3a, b, d, and k, Objective 5a, b, c, and d, Objective 9a and c, and Objective 11a, b, c, and d.
2. The proposed plan of development is consistent with the City of Melbourne City Code, Appendix B, Zoning Code and Appendix D, Land Development Code, including provisions for lot sizes, lot coverage, building heights, yard requirements, off-street parking, vegetation and the environmental impact assessment report, and Chapter 13, Flood Prevention and Protection Regulations, and Chapter 27, Stormwater Management Regulations.
3. The proposed plan of development is harmonious to the adjacent and area uses, both proposed and existing, since this is a low impact residential use adjacent to a residential area and special design considerations were made to reduce the potential for conflicting use and intensities, including providing a minimum of a 55 foot wide heavily vegetated buffer with a fence located on the outside of the buffer and the removal of nearly all parking from the area adjacent to the residential area.
4. The proposed plan of development will promote the public health, safety, welfare, economic order, aesthetics, and quality of life in the community and the region, as it will allow uses permitted in the Comprehensive Plan, Zoning Code and in keeping with the campus development and setting as an accessory use which is prevalent in the area.

The Planning and Zoning Board recommended denial of the proposed residential apartment dormitories with the following findings:

1. The site plan is not in compliance with Objective 11, Policy b. of the Conservation Element of the Melbourne Comprehensive Plan.
2. The site plan does not comply with Article XX(c), Appendix B, Melbourne City Code.

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3. The site plan will adversely impact the public health, safety, and welfare.

If the plan prepared by Teimouri & Associates, Inc., of Melbourne, Florida, consisting of a one-sheet plan with Project No. 2001-127 dated September 5, 2001, and signed and sealed on October 3, 2001, is approved by Council, the following conditions are recommended:

- a. A change to the site plan will require re-evaluation of the site plan by the City Engineering Department and the Planning and Economic Development 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 10% in the amount of open space or vegetative areas on site; 2) an increase by more than 10% in the size (building footprint) or height of the buildings as part of this plan approval; or 3) any proposal which would allow for a fully operating driveway connection to Babcock Street without gated/controlled access, and any construction encroachment within the FEMA and Code designated floodway.
- b. The 55-foot wide undisturbed buffer along the north property line shall be preserved, except for the proposed driveway access to Babcock Street.

Mayor Buckley opened the public hearing.

Ken Crooks, attorney representing the applicant, distributed a notebook of information containing the following: resume of Vaheed Teimouri, Professional Engineer; City of Melbourne site maps indicating dormitory/apartments adjacent to single-family residences; transcript of speeches at groundbreaking ceremony of Hume Hall Residential College, March 13, 2001; article from College Planning and Management; transcript of interview of Kevin Duffy and Norb Dunkel regarding housing trends on campus; appraisal of subject property; memorandum from Paul Gougelman to Mayor Buckley dated June 20, 2001; and memorandum from Peggy Braz to Henry Hill dated July 18, 2001.

Mr. Crooks reported that they are seeking approval of an amended site plan for the project. The property is zoned I-1, which is appropriate for college dormitories and apartments. The amended site plan fully satisfies all the criteria and standards for approval. Florida Tech heard what Council had to say and took the steps to address the concerns through an amended plan.

There are certain changes and improvements to the site plan. The foremost is that the drainage calculations have been performed by a registered engineer. The plans have been reviewed by the City Engineer and Brevard County stormwater staff. They have been fully engineered to satisfy or exceed all standards that are in place or likely to be put in place in the future. They satisfy a 100-year storm event. This project will have no adverse impact on property located downstream.

Continuing, Mr. Crooks stated that the buildings have been turned in order to minimize impact to the residents. He stressed that there are no city regulations that prohibit a

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dormitory from being located next to a residence. Also, city staff provided information on 13 locations in the city where this situation has occurred (outlined in notebook). The plan includes a 55' natural buffer zone. The trees will be maintained between the residents and the proposed buildings. The buildings will be phased and the buildings farthest from the residents will be built first.

Mr. Crooks explained that Florida Tech made an exhaustive study of all sites on campus. This was done before the proposal was submitted to the city. They came to the conclusion that the subject property is the most viable. That is why Florida Tech continues to champion this proposal. Student housing facilities will help the university attract and keep students. Millions will be spent on the property. The appraisal in the package of information indicates that the current market value of the property is over one million dollars.

The housing will allow for upper division students to remain on campus. The university believes the property is the best location and will provide the type of environment today's students is seeking. He concluded by requesting approval in order to move forward.

Mike Hambleton, University Housing Services, representing Florida Tech, stated that after receiving the final order (on the first plan) they reviewed it carefully and noted the concerns related to compatibility and storm drainage. The site plan has been altered to improve compatibility with the surrounding neighborhood. The buildings have been rotated, which resulted in the 55' buffer being increased by an average of 25'. Additionally, all references to access to Ruffner Road have been eliminated. The access from Babcock Street has been modified so that it does not intrude into the buffer. There is less asphalt and impervious area on the site.

Mr. Hambleton said equally as important is that the storm drainage has been completely engineered. They have gone above what the law requires. They have met the county's requirements and the plan has been designed to meet/exceed a 100-year event.

Vaheed Teimouri, Engineer representing Florida Tech, stated that he has been retained to look at the stormwater management on the site. He listed his qualifications. Mr. Teimouri referenced the drainage study commissioned by Brevard County, the City of Melbourne, and the St. Johns River Water Management District being conducted by the firm of PBS&J. He reported that they met with the county, SJRWMD and PBS&J. They obtained information on the criteria for design of the project.

Mr. Teimouri elaborated on the steps taken to address drainage. He noted that they have improved the capability of stormwater handling. On smaller event storms, they have reduced the runoff from this site to the creek. He further explained that they used the study, which is in its infancy stage, to design the site. He stressed that the site will not cause any flooding on site, upstream, or downstream.

Jim DeSantis, Vice President of External Affairs, Florida Tech, reported that they have approached this project with sincerity, concern and a real outlook to the community. Mr. DeSantis elaborated on the school's ranking in the top 14 engineering schools in the United States and the impact the school has on the local economy. Overall, Florida Tech

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contributes \$300 million per year to the local economy and the City of Melbourne, through its cooperation, has played a role in this.

Mr. DeSantis stated that they must stay competitive with other institutions in order to continue attracting students to Florida Tech. There is a problem when three students share a dorm instead of two and students line up at 4:00 a.m. to register for a room. He said they do not have sufficient room; they have a housing shortage.

Mr. DeSantis pointed out that he is the former Vice President of the Florida Wildlife Federation; therefore, he is sensitive to the environment. He reported on the effort taken with the original plan to review it with the surrounding neighbors. They addressed traffic, aesthetics, noise, buffering, etc. Regarding the 55' buffer, the trees are so high that the residents won't see the buildings. The roof area has been minimized and the buildings will be practically invisible. The lighting has been designed to focus downward and the lights will be lower than the public lighting in the adjacent subdivision. They agreed to install a six-foot fence along the Hickory Subdivision line.

Regarding noise, Mr. DeSantis said 192 students on 10 acres is considered low density. The housing will be reserved for upper classmen and graduate students. The buildings have been shifted on the new plan. The air conditioners are small and will be enclosed. There is a commons building on the far area of the property with laundry facilities. There will be no other gathering areas. A full time professional resident advisor will be located on site and a student advisor will be located in each building.

All traffic from Ruffner Road has been eliminated. Students will have vehicular access to the site (from Babcock Street) four times per year. Beyond that, they will not be able to drive on the property. A pedestrian walkway is proposed for access to the site.

Regarding the issue of other sites, Mr. DeSantis said they seriously studied all other property on campus. The other sites just don't work. If the school moves south, all new infrastructure will be required. It will also result in 10% of the student body being separated from the school. Regarding the east side of Babcock Street, he stressed that they would prefer that nothing be located on that side of Babcock. He elaborated on the accidents that have occurred and stated that they have a responsibility to the students and parents to provide a safe, secure environment.

Mr. DeSantis addressed drainage and said the retention area has been designed four times the size required by law. Water from the west will back up into the pond as the creek rises and be slowly released. Under the worst storm conditions, the flooding will be no worse than it is now. The problems that exist to their west and east can't be solved by this development.

Mr. DeSantis stated that they have made every effort to abide by the rules, not impact anyone negatively, and at the same time meet their needs. He stressed the importance of the plan and asked for serious consideration.

Mr. DeSantis explained how the site will be accessed in response to Mrs. Walker. Mrs.

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Palmer referenced the low lighting and vegetation and asked if special security will be available for female students at night. Mr. DeSantis said they currently have an escort service available in addition to the security force.

Mr. Contreras asked if the revised plan has been shared with the surrounding neighbors. Mr. DeSantis said no; however, they did provide the plan to Mr. Needelman who seems to represent the interests of the neighbors.

In response to Mr. Palmer, Mr. DeSantis explained how repositioning the buildings will improve the compatibility. Mrs. Braz added that the clubhouse and buildings A, E, F, and G will be constructed first.

Mrs. Poole pointed out that one of the dorms in Southgate was converted to an administrative building and now it is being renovated back to student dorms. She added that the lines are long because students want to get into the dorm with the swimming pool. Mr. DeSantis confirmed that they were able to move offices in Southgate back on campus. This allowed them to convert the space back to dorm space.

Following a brief discussion about Babcock Street, Mrs. Poole commented that Florida Tech will not be able to stop students from crossing the road. Mr. DeSantis said the difference will be the mass – an occasional student crossing versus several hundred for every meal, use of library, classes, etc. He stressed that is a big difference.

Laura Beers, 20 W. Rosevere Way, stated that she is an alumna of Florida State University and a resident of the Hickory Hills Subdivision. She said that it is not right for the second application to be considered and judged when the first plan is still in the appeal process. She added that unless the reasons for denial have been addressed, which they have not, Council cannot make a decision on the new plan. Florida Tech should waive any rights under the pending suit. Additionally, she noted that Florida Tech does not pay taxes but the residents do.

Regarding compatibility and flooding, Ms. Beers said both have not been properly addressed. She pointed out several instances where Florida Tech has not worked with the community. The buildings are proposed close to her neighborhood and they will be subjected to continuous parties and lights.

Regarding flooding, the data being used is dry paperwork and does not compare with actual flooding. She has seen the creek rise over the banks. The current FEMA maps show there should not be flooding, but she has seen the contrary. She questioned what will happen if repairs have to be made to the access bridge and students can't get to their cars. Her guess is that they will park in the adjacent neighborhood and walk around the fence, which is unacceptable. She noted that she understands that the land belongs to Florida Tech, but it conflicts with the neighborhood residents and causes an environmental impact. It should be used for classroom buildings or donated for a park.

Ms. Beers submitted the original letter from Attorney Beadle (referenced at the beginning of agenda item).

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Moved by Walker/Poole that the letter from Attorney Beadle be read into the record. Motion carried. Mayor Buckley voted nay.

Mayor Buckley pointed out that all the members have received a copy of the letter. Attorney Gougelman read the letter in its entirety. He recommended the applicant address the points made in the letter. Mrs. Walker said she did not receive the letter until this meeting, so she knows that the public has not had a chance to review the letter. The Mayor pointed out that they have also not seen the letters in favor of the plan.

Mr. Crooks stated that there is no issue of res judicata (raised in Attorney Beadle's letter). He added that they have not violated any city regulations relative to the site plan. There is no pending site plan because (the first) has been denied. At this point a new plan has been presented and if approved, they will dismiss the lawsuit. If denied, they will go forward with the lawsuit that is in place.

Mr. Contreras asked hypothetically if the new plan is denied and they are victorious in their suit, if the plan that is currently under litigation will be put in place. Mr. Crooks said at the point the court would return the plan to the city and the city, he, and Florida Tech would make that decision.

Mr. Gougelman discussed the letter from Attorney Beadle. He noted that three issues are raised. The first is a question of whether during the staff analysis the site was looked at in isolation or as a whole. He asked Mrs. Braz to comment.

Mrs. Braz explained that this particular plan for 10 acres is not an isolated plan; it is not divorced from the campus. When Florida Tech came to the city with the plan, staff looked at how it would impact. Parking was always an issue; however, they are building enough parking to accommodate the needs for these apartment dormitories. It is not the intent of Florida Tech to increase the student population. Cars will simply be moved from one place to another. Additionally, staff looked at the master plan and clearly Florida Tech is working hard to plan the entire campus.

Mrs. Braz confirmed for Mrs. Walker that staff thought of the impact on the adjacent neighborhood. Originally, there was limited access from Ruffner Road, and buffering, setbacks, access from Babcock Street, etc. have been addressed.

Attorney Gougelman said the second issue raised in the letter relates to whether there are two competing applications. He noted that the Code has a restriction on resubmittal of a rezoning on a same or similar project. Applicants cannot resubmit for six months. However, that does not exist in the Code with regard to site plans. Under our Code, a person could have multiple site plan applications.

The third issue is the res judicata issue. It basically means that you don't get two bites of the apple. An applicant can't go to court and litigate the same issue until a favorable ruling is received. Since Council is sitting in a quasi judicial capacity, the same rule applies here. An applicant cannot come in and relitigate the same plan over again. The doctrine of res

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judicata bars that from happening.

Mr. Gougelman referenced a 1982 decision from the Third District Court of Appeals. The court said where there are changed conditions and new facts, which did not exist, res judicata will not come into play. Therefore, this is a decision Council will need to decide. In looking at the new site plan, Council needs to determine if there are changed conditions or new facts. He added that the rule is to be liberally construed in favor of the applicant.

Mayor Buckley recommended Council take a short recess. He instructed the members to refrain from speaking with the audience.

Recessed: 9:16 p.m.
Reconvened: 9:27 p.m.

Nancy Johnson, 2514 Ruffner Road, displayed and narrated a video of the area. She indicated where the fence will be located, a “sea of mud” where the creek had overflowed, debris on the bank from the creek overflowing, and the bulldozed area where borings were taken. Mrs. Johnson stated that 55’ from her home is not that far. Additionally, the first phase places a dumpster near her home. She stressed that the flood maps are wrong and if the design is based on the maps, it is incorrect.

Regarding noise, Mrs. Johnson reported that she can hear noise from Southgate; therefore, she knows she will hear the noise next door.

Cathleen Cummings, 16 Vida Way, stated that her main area of concern relates to parking and traffic issues. Ms. Cummings presented seven photographs that she took of residence hall parking. The photographs show that the lots are full. She noted that she walked the area one day and the lot was 98% full. Additionally, 30 cars were parked illegally. The dirt lot (part of the subject site plan) contained 60 – 80 vehicles. She said her concern is that the proposed dorm will house 336 students, yet only 168 spaces are required and 60-80 cars already utilize the lot. Mr. DeSantis has indicated that the project is geared toward attracting students to FIT. She said that the information clearly shows that they have not adequately addressed parking.

Ms. Cummings discussed the future widening of Babcock Street and said there will be no access for northbound traffic to Vida and Rosevere. The four times per year that students move in/out will cause a cue of traffic in front of her home. Also, she said she believes students will be parking on her street because it will be easier for them.

Oli Johnson, 2514 Ruffner Road, submitted pictures, which show flooding behind his home after Hurricane Erin in 1995. He reported that in 1995 and again in 1999 (Hurricane Irene) the water was up to at least the 10-12’ contour line. According to the site plan, the 100-year flood line is well below the contour. Mr. Johnson stated that the 100-year line on the plan is not correct.

Continuing, Mr. Johnson said the entire site is 10.22 acres. Five acres is located on the north side of the creek and five acres on the south side of the creek. There are

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approximately 1 ½ acres that are wetlands and unbuildable. This leaves 336 students on three – four acres, which is high density next to a residential area.

Mr. Johnson questioned if the county will allow construction of a bridge over the creek across their right-of-way. Additionally, he asked if FDOT needs to permit a bridge across a Florida navigable waterway.

Vineta Raley, 15 Edgewood Drive, said she has lived in the Hickory Hills Subdivision for 44 years. This area is located in the horseshoe bend of Crane Creek. Mrs. Raley said the plan may need further study. Her concerns center on the damage such building will have on the land surrounding Crane Creek. She said in looking at the map, Crane Creek is the genesis of Melbourne. She described the boundaries of the creek, listed the drainage area, and noted that those waters flow directly into the creek. She noted that as a former member of the Planning and Zoning Board, she has an understanding of the study that is involved. She stated that it is her opinion that the plan will not promote the public health, safety, and welfare and she requested Council oppose the plan.

Johnise Sapundjieff, 19 Rosevere Way, said she strongly objects to seven dorms, a community building, parking and parking garage, and 336 students being directly adjacent to the neighborhood. She calculated that 336 students paying \$2,500 per semester three times per year will equate to \$2,520,000 per year for Florida Tech. She asked about the residents who have paid taxes for 40-plus years yet FIT pays none. She commented that it makes more sense to buy property at the southeast corner of University Boulevard and Babcock Street. It is undeveloped land and the move would preserve the hammock and wetlands.

Ms. Sapundjieff submitted five photographs showing standing water on Florida Tech property and in the Dartmouth Avenue area.

Mitch Needelman, (State Representative), 2317 South Bignonia Street, said his property is located to the east of the subject property. He stated his qualifications and noted that he holds dual Master's Degrees, served on the Melbourne Comprehensive Planning Committee, served on the Melbourne Zoning Board of Adjustment for 12 years where he viewed numerous site plans, served 28 ½ years with DNR/DEP as a law enforcement officer, and is past president of the Friends of Crane Creek.

Mr. Needelman said his concern is that this is not the proper location for Florida Tech to accomplish its mission. FIT owns over 130 acres in Melbourne, West Melbourne, Palm Bay and Grant. He submitted maps and a report indicating the location and total acreage of property owned by FIT.

Mr. Needelman said his concern focuses on flooding. Retention is not the issue – displacement is the issue. This is a flood area allowing large volumes of runoff to be diverted/flowed before going eastward. The FEMA maps are obsolete and the current study being referenced by the applicant has not been completed. The floodplain could be moved higher up the contour.

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Mr. Needelman submitted a page from the Brevard Legislative Delegation package and indicated that a request was made at the delegation meeting for funds for Light Detection and Ranging Mapping for Brevard County to establish a digital terrain model that will accurately portray floodplains and update FEMA maps. He added that there was testimony from residents and staff indicating that the FEMA maps are not up to date.

Mr. Needelman added that he forwarded the site plan to a firm in St. Cloud for review. Their preliminary review prompted concern about percolation rates, whether the retention areas will contain runoff by the development, and the water capacity as open space.

Mr. Needelman submitted nine photographs showing flooding on the site and various property in the area after a less than two-inch rain event that occurred last September.

In conclusion, Mr. Needelman stated that he opposes the site plan for the same reasons cited by the Planning and Zoning Board. Mr. Needelman read the board's findings and asked if the laziness of students not using a crossover is worth the cost of putting the neighborhood in jeopardy. He encouraged Council to deny the request.

Laurel Edwards, 2100-B Waverly Place, stated that she is a former FIT student. She noted that she still remains in contact with many students and there are a great deal of students who are opposed to this.

Ms. Edwards reported that students are in line for housing because they want specific rooms, not because there are not enough rooms. She discussed the water level last month in the botanical gardens and said it was chest high. This was after two or three days of rain. Retention flowing directly into the gardens will destroy the exotic plants.

Ms. Edwards assured Council that there will be parties in the new dorms. She elaborated on the party atmosphere and concluded by saying nothing will stop students from crossing Babcock Street.

Mr. Crooks asked the engineer to respond to the flooding issues. He added that the concerns raised are based on inadequate or inaccurate assumptions.

Vaheed Teimouri stressed that the botanical gardens have nothing to do with this project. The garden is a low area that is south of this canal. The video that was displayed showed the area around the canal and the wetlands. He discussed the elevation of the area and said naturally the area gets flooded, they don't dispute that. Regarding the bridge, the county has asked them to design the bridge so that it will be higher than the elevation that will be finalized in the PBS&J study.

Mr. Teimouri said since concern has been expressed with the FEMA maps, they went a step further and complied with the PBS&J study. He discussed the gauge at Babcock Street and said during Hurricane Erin the highest elevation recorded was 8.3.

With regard to percolation rates, he explained why that has nothing to do with flooding or the staging of the pond. They have to have enough capacity available to handle water

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pushing back into the system and percolation rates are meaningless at that point. Mr. Teimouri referenced the comment about FDOT having jurisdiction over navigable waterways. He noted that this is a pedestrian bridge and he does not know that the creek is navigable.

Mrs. Palmer asked about displacement versus retention. Mr. Teimouri explained that retention is the treatment of a certain amount of runoff. The current rule is that you cannot discharge any more after development than before development. The site will have to handle a storm event and be able to control discharge. Through a piping control structure, that is what they have accomplished. He said if everybody within the drainage district adhered to these conditions there would not be any upstream/downstream flooding.

Mrs. Palmer said she is confused by the photographs that depict standing water during relatively light rainfall. She asked if those areas will be part of the retention. Mr. Teimouri said no. Those areas would remain wetlands and there would be additional retention.

Mr. Teimouri confirmed that this development will not hinder the slow down that occurs from west to east in the creek.

In response to Mrs. Poole, Mr. Teimouri said the depth of the retention areas varies. He explained the different elevations and noted they will generally be three feet deep.

Mr. Contreras asked if the natural terrain of the creek will be affected. Mr. Teimouri said they will be located completely out of the right-of-way of the canal.

Mr. Teimouri referenced the photographs that were submitted and said it is difficult to establish (elevation) lines. There are no hard facts or surveys that he is able to respond to.

Responding to an issue raised by Nancy Johnson in the videotape, Mr. Crooks stated that they brought the fence as far across as they could. Beyond that point is creek right-of-way.

Mrs. Palmer asked about the county easement and the location of the bridge. Mr. Crooks said they would have to obtain a permit from the county; however, the county has already provided input on the type of bridge.

Mrs. Palmer asked about the location of the dumpsters to the nearest home. Mr. Teimouri and Mr. Crooks showed the location on the plan and said they would be happy to relocate the dumpsters.

Attorney Gougelman added the following items to the record: all photographs presented, drawings, aerials, videotape, compendium of exhibits prepared by the applicant, Council agenda package, city file with regard to this plan and the former plan, Comprehensive Plan and City Code.

Mayor Buckley closed the public hearing.

Mrs. Walker stated that she cannot support the plan for the same reasons stated by the

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Planning and Zoning Board and Mr. Needelman.

Mayor Buckley stated that denial by the Planning and Zoning Board was based on action taken by the City Council on the first site plan. The revised site plan provides drainage for a 100-year storm event, realignment of the dorms to satisfy the Hickory Hills residents, and no access from Ruffner Road. He stated that he believes they have made the necessary changes.

Mrs. Poole asked for additional time to make her presentation. Following no response from Council, the Mayor asked Mrs. Poole to keep her comments to 10 minutes.

Mrs. Poole referenced the Planning and Zoning Board's denial of the new site plan and the reasons cited by the board. She added that Council's reasons for denial of the original plan have not changed and the new plan does not comply. She cited from the final order (which denied the first plan) and pointed out that the application is inconsistent with the City's Comprehensive Plan and it is inconsistent with the site planning requirements in the City's Land Development Code.

Mrs. Poole referenced the staff report on this item and disagreed that this is a low impact residential use. She stated that this is an institutional use, which is not harmonious or compatible with the surrounding area. Additionally, she disputed the FEMA maps that indicate the majority of the site is located in Flood Zone X, which is suitable for development. Portions of the property on either side of the creek are located within a designated floodway and in a special flood hazard area flood zone.

Mrs. Poole discussed the differences in the two plans and questioned/expressed concern about: the type of fence that will be erected; noise that will be generated by 84 air conditioner units running 24 hours a day; how the dormitories will be sufficiently buffered from the existing residential; the density not being harmonious with the R-1AA subdivision that has been in existence for years; Florida Tech having property available elsewhere that would be more compatible; the lowering of property values by the development; and the area residents having paid taxes for 40 years, yet FIT pays no taxes.

Mrs. Poole quoted Mr. Teimouri from the October 11 Planning and Zoning Board minutes where he indicates that the draft drainage report estimates the flood elevation as 12' at Babcock Street and 15' at Country Club Road. If accurate, this would mean that these roads would be under water. Mrs. Poole stressed that the report must be reviewed and approved by FEMA.

Mrs. Hand said she appreciates the changes the developer made to the site plan – moving buildings and providing a storm drainage system for a 100-year storm event. She stated that she is concerned about the project based on the pictures and video presented by the neighbors. She added that it doesn't seem to gel. She noted that she wants to believe the engineers, but the pictures show standing water. Additionally, she pointed out that Representative Needelman has lived in the area for years and she feels he is qualified to give an opinion.

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Mr. Palmer agreed that the reorientation of the buildings solves the compatibility issue; however, he does not think the storm drainage issues have been resolved. The adverse impact on the environment along with the parking requirements are still up in the air. He commented that the plan is great, but it is in the wrong location. It is not environmentally safe or compatible with the neighborhood.

Mrs. Poole stated that with all the evidence presented, the reasons listed in the final development order, and testimony from residents and expert witnesses, she cannot support the plan.

Moved by Poole/Walker to deny Site Plan SP-2001-04.

Mayor Buckley said Florida Tech has met all the city requirements. If this site plan is denied, it will result in a taking. The people who live next door are trying to take the property away from the school.

Mrs. Palmer said her main concern has been with drainage and she has been convinced by the engineer, Mr. Teimouri, that FIT has addressed the drainage concerns. She informed the audience that Council has a responsibility to approve site plans that meet City Code. She stressed that Florida Tech has done more than just meet the Code. They have satisfied the concerns of the neighbors and the city. She concluded by saying when this is all said and done, the property will be developed after a long litigation and cost to the tax payers.

The question was called. The roll call vote was:

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

Nay: Contreras, C. Palmer, and Buckley

Motion carried.

Attorney Gougelman reported that an order will be prepared for the next Council agenda.

11. ORDINANCE NO. 2001-56: (Public Hearing/Second Reading) A proposed amendment to Section 32-49 of the City Code to define the reimbursement area in which properties served by a new 16-inch water main on Dairy Road will pay a proportionate share of the cost for its construction. (First Reading 10/23/2001)

Attorney Gougelman read Ordinance No. 2001-56 by title. There were no comments from the audience.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2001-56. The roll call vote was:

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

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Nay: None

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract for Oak Street Elevated Water Storage Tank Rehabilitation, Project No. 97396, Utilities Service Company, Inc., Perry, Georgia – \$101,900.

Mr. Hill briefed Council. This is a proposed construction contract award for painting the elevated water storage tank at Oak Street and Hibiscus Boulevard. This 500,000-gallon storage tank was constructed in 1958 and is approximately 140 feet high. It helps maintain pressure in the system and provides storage during peak needs or for fire fighting.

The work consists of cleaning, spot prepping, and painting the exterior surface of the steel tank including all the support structure. The project also includes replacing the deteriorated fence around the site with a six-foot high vinyl clad chain link fence.

The project does not include removal of the existing coating which is paint containing lead. Staff does not think that the remaining life of the tank justifies the extra expense. Hydraulic computer analysis of the system indicates that the tank can be removed if a ground storage tank is added to the system. However, at a minimum this would be at least five years away. The coating does need to be improved, and it will last a minimum of five years. The contractor will also apply the city logo around the circumference of the tank as we have painted on the previous two tanks. We are looking at some variations on that theme since this will be the first tank actually in the city to receive the logo and a “welcome” message would be appropriate.

Utilities Service Co., Inc., from Perry, Georgia submitted the low bid of \$101,900. The standard contract requirements will apply to this project. The time for completion is 60 days with liquidated damages of \$200 per day if applicable.

Moved by Poole/Hand for award of the contract to Utilities Services Co., Inc. in the amount of \$101,900. Motion carried unanimously.

13. COUNCIL ACTION RE: Consent Agenda

Mr. Hill pointed out and elaborated on the items relating to security (“j” and “l”). Council briefly discussed item “a.”

Moved by C. Palmer/Hand for approval of 13 “a – l” as recommended.

Mr. Palmer referenced item “f” and asked why the contract was not extended. Mr. Hill explained that the contract expired. It was extended one month to allow for this award. Mr.

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Palmer asked staff to investigate if the contract can simply be extended.

The maker/seconded excluded item “f” from the motion.

The question was called on the motion, which excludes item “f”. Motion carried unanimously.

- a. Resolution No. 1728: A proposed resolution canceling the December 25, 2001 regular meeting of the City Council.
- b. Purchase of 476 tons of bulk Ferric Sulfate for the Water Production Division, Kemiron Companies, Inc., Bartow, Florida - \$56,168.
- c. Purchase 2001 or newer Ford F550 Fire Rescue Vehicle, Ferrara Fire Apparatus, Inc., Holden, Louisiana - \$78,250.
- d. Rebuild and recondition a Klampress system at the surface water treatment plant, Ashbrook Corporation, Houston, Texas - \$216,295.
- e. Purchase/Installation of telecommunication furniture from Bramic Creative Business Products Ltd., Ontario, Canada - \$18,737.
- f. Contract to provide sludge transportation and disposal service for two wastewater treatment plants (approximately 12,000 cubic yards @ \$7.68 per yard), H&H Liquid Sludge Disposal, Inc., Ft. White, Florida - \$92,160.
- g. Amendment to potable system construction agreement for Grand Haven Subdivision.
- h. Supplement No. 87 to continuing consultant’s contract for engineering services to construct additional covered storage at the Streets and Parks Divisions, Frazier Engineering, Inc., Melbourne, Florida - \$17,000.
- i. Supplement No. 89 to continuing consultant’s contract for engineering services to realign Parkway Drive from Stewart Road to the FECR, Project No. E02608, Frazier Engineering, Inc., Melbourne, Florida - \$20,000.
- j. Hire two part-time Custodian/Porters to provide custodial services in City Hall, Annex 1 and Annex II at an estimated cost of \$30,000.
- k. Appropriation of \$44,000 in Brevard County E-911 funds to purchase two consoles, 13 chairs, and purchase and install carpet for the Melbourne Communication Center Public Service Answer Point.
- l. Contract for interim Class C uniform security coverage at both water treatment facilities, G&S Security Services, Melbourne, Florida at a maximum total cost of \$14,328.

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14. ORDINANCE NO. 2001-57 (A&V #241): (Public Hearing/First Reading) A proposed ordinance to abandon and vacate the northern 227.88 feet of the 60-foot wide right-of-way of Catterton Drive. (Requested by Edward and Patricia Windle)

Attorney Gougelman read Ordinance No. 2001-57 by title.

From the agenda report: This is a request by owners of property abutting Catterton Drive to vacate the unimproved northern 227.88 feet of the 60-foot wide right-of-way. Edward and Patricia Windle own Lots 1, 2, 3, and 20 of Block 3, Magnolia Park Subdivision. The property abuts the west side of the improved right-of-way. The property on the east side of the road is the site of a stormwater retention pond owned by the Florida Department of Transportation. The Windles want to build a new residence on half of this property and sell the other half for another home.

The owners have executed a Declaration of Covenants and Restrictions that will restrict the use of the property to residential lots conforming to Code. The document has been recorded. There were no objections to the request; however, an easement will be required for existing water and sewer lines.

Mayor Buckley opened the public hearing.

Edward Reilly, 701 Central Boulevard, said he lives around the corner from this property. He expressed concern about access to the water and sewer lines located under Catterton Drive and how they will be maintained or repaired if this becomes private property. Additionally, he asked about access to the retention pond and noted that the pond must remain clear.

Mayor Buckley clarified that the city would retain an easement for the water and sewer lines. Mr. Reilly asked what type of building will be constructed that will require all of this additional land.

Jim McGinnis, 700 Central Boulevard, agreed with Mr. Reilly's statements. He added that the area has a history of flooding and new construction between the retention area and Crane Creek causes concern. He asked Council to deny the request.

Donald Ream, 1919 Central Boulevard, said his property is located in front of the subject property. He said there are two entrances to the property, one from Central Boulevard and one from Catterton Drive. He added that he is worried about commercial development. Additionally, if this becomes private property, there will be enough property to build a hospital. He stressed that he is not in favor of the request.

Ed Lanham, 1924 Catterton Drive, said he would like to hear more about the intended use of the property.

Mrs. Palmer said this is a huge piece of property to give away to someone. She added that she can't believe someone would ask us to vacate property that is the size of two lots so they can sell a portion. She noted that the applicants are the couple that owned the

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Aware Woman abortion clinic. When they started the clinic in a residential area, they sneaked in and said that it would be a real estate office.

Mrs. Palmer referenced the declaration of covenants and restrictions prepared by the City Attorney for the Windles. She pointed out the section, which provides "...so long as the property is zoned R-1A, it shall only be developed with single-family detached residences or other uses permitted by R-1A zoning..." She commented that everything from that point on hinges on the property remaining R-1A.

Moved by C. Palmer/Hand for denial of Ordinance No. 2001-57.

Mrs. Hand said when she reviewed this item she recalled how the abortion clinic came into existence. She stated that she does not know how she can trust the zoning to remain R-1A.

Mr. Palmer said he is concerned about the size of the property and whether it will interfere with access to the retention pond. Because of the situation with the pond, he recommended the property remain as is.

Mrs. Poole agreed that there will be no security in the zoning remaining R-1A. She added that she does not think there is a danger of this becoming a clinic. However, she will not support the request because it is not a good situation.

The question was called. Motion carried unanimously.

15. PRELIMINARY PLAT APPROVAL (SD-2001-04): (Public Hearing) A request for preliminary plat approval for Pine Creek Subdivision on a 42.07-acre parcel located north of Eber Road and east of Dairy Road. (Owner/applicant, Courtelis Company, representative, Hassan Kamal, B.S.E. Consultants, Inc.) (P&Z 10/25/2001)

Ms. Braz briefed Council. The applicant is requesting preliminary plat approval for Pine Creek Subdivision for 189 lots on a 42.07-acre parcel of land. A preliminary plat for Pine Creek on property zoned R-2 (Cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) was approved by Council on March 9, 1993. This plat, which expired, included 195 lots, most of which were 50 feet in width. Council rezoned the property in January 2000 to R-1B (Single-Family Residential). At that time a second preliminary plat with 163 lots was approved and has now expired. The adopted Future Land Use is Low Density Residential at six units per acre.

The proposed subdivision will consist of 189 lots (4.5 units per acre) with several private streets extending from a single street (Shawnee Lane) accessing to Eber Road. This street will align with the entrance to the Bayberry Subdivision at the intersection with Eber Road. A proposed retention pond (Tract D) will be located on the central portion of the plat. The pond will outfall to the drainage right-of-way to the north. Tracts A and B will be used for landscaping area and a subdivision entrance sign; Tracts C, E, G, H, I, and J will be used for open space, landscaping and signs; Tract F will be used as a private community recreation facility; Tract L will be for the private streets; and Tract K is

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proposed to be for a future access (street) extension to the west, across the canal. The project will be developed in four phases. All tracts will be owned and maintained by the homeowners' association.

City Code, Chapter 29, Section 29-6(b)(1) b. and c. requires that a street connection be made to similarly zoned or used property surrounding the vacant parcel slated for subdividing. The parcel to the west, also owned by the applicant, is zoned R-2 (Cap 6). Extending a street by constructing a bridge across the canal will allow for the Code required connection to be made. Tract K proposes to provide this connection at a future date. However, the city has no control over the private streets or this reserve tract for a street extension and enforcing this provision may be difficult.

On the previous plat Council did not grant a variance allowing the applicant to omit the street connection. The street connection would reduce sole reliance on Eber Road to access the property to the west and Dairy Road. If constructed, this will reduce the number of trips using the Dairy/Eber intersection and result in fewer trips passing by the entrance to South Oaks Subdivision and the Bayberry/Pine Creek Subdivisions.

A sidewalk is required along the Eber Road frontage. The applicant will make payment into the bikeways/sidewalk trust fund since Eber Road is tentatively programmed to be widened to four lanes in the next few years. Shawnee Lane from Indian Oaks Drive to Eber Road will be constructed to be 32 feet wide to meet Code for the volume of traffic projected to travel this link. Traffic calming devices should be considered.

The Environmental Impact Assessment Report indicates that there are five active gopher tortoise burrows on the property. Removal or taking of these tortoises will require a permit from the Florida Fish and Wildlife Conservation Commission. The site is primarily covered with pine trees. Most of these pine trees are less than 8-10" in diameter. The property also contains grasslands and four small isolated wetlands totaling .77 acres within the pine flatwoods forest.

The consultants for the city preparing construction plans for the Eber Road widening initially identified a portion of this site as a desirable location for the Eber Road retention. The consultants say that 3.5 acres are needed for the retention basin. A proposal to develop a joint retention system was considered, but this proposal has been abandoned as it was proving unfeasible.

The proposed preliminary plat is consistent with the Land Development Code, including Appendix B, Zoning, Appendix D, Land Development Regulations, Chapter 29, and Subdivision Regulations. A schedule or phase should be established for when Tract K is to be developed. This portion is tentatively scheduled for Phase III.

The Planning and Zoning Board and staff recommended approval of the preliminary plat for Pine Creek Subdivision, consisting of a one-sheet plan with Drawing No. 9214904 on Sheet 4 of 19, with Project No. 92141, prepared by BSE Consultants, Inc., of Melbourne, Florida, dated October 10, 2001, with the findings listed in the agenda package and the following conditions:

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- a. At the time of construction plan review, the scheduling for construction of roadway improvements in Tract K and extension of the roadway across the canal shall be identified.
- b. The applicant shall make payment into the city's bikeways/sidewalk trust fund for the length of the subdivision boundary abutting Eber Road. Said trust fund payment shall be used to offset the construction costs of a sidewalk on the north side of Eber Road when Eber Road is widened.
- c. Any change to the preliminary plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the preliminary plat includes, but is not limited to: a) any decrease in the number of access points including public or private streets to or from the subdivision or b) an increase of more than five lots.
- d. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.

Note: See action for additional stipulation "e."

Mrs. Poole asked how the plat will improve traffic congestion and promote the health, safety, and welfare of the community. Mrs. Braz replied that if the development is within Code, we have to make the assumption that it enhances the health, safety, welfare, etc. Staff takes the policies provided by Council and implements them through the development process. Mrs. Poole stated that she would like to see our Codes tightened.

Mrs. Poole referenced stipulation "a" and said requiring the applicant to identify the roadway across the canal does not mean that it will be built. Mrs. Braz explained that these are private streets. The developer has to put in the stub street; however, they do not have to make the actual connection.

Mrs. Palmer questioned if the applicant's solution to not receiving a variance from Council for the connection was to make the streets private.

Mayor Buckley recommended an additional stipulation be added requiring additional access. Mrs. Braz said that access would have to be on Eber – that is the only place they have frontage. The Mayor replied that they should have to figure out where to put the additional access. Mrs. Braz said staff thought it was important for the access to line up with Bayberry.

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Mr. Palmer said stipulation “a” is not strong enough. It needs to be reworded to ensure that the roadway is constructed across the canal. Mrs. Braz explained that our Code does not require the extension on private roads.

Mr. Gougelman asked if this will be a gated subdivision. Mrs. Braz replied yes. Mr. Gougelman said his concern is that in the future the roads will have to be maintained and who knows if the residents will have a reserve fund. He added that there ought to be some disclosure filed in the public records so that when a person closes on a lot they are informed that the roads are private and won’t be considered public without the bridge being constructed.

Mrs. Palmer asked who will be required to maintain the roads. Mr. Hill said the homeowners. Mrs. Palmer asked if the two entrance rule is for public safety. Mrs. Braz clarified that we don’t have a requirement for two accesses. The Code requires a connection if you have a place to connect to. There is no requirement that a subdivision must have two access points. She added that most people want a gated community with limited access. Additionally, Council has granted many variances to the subdivision regulations not requiring connections to be made.

Hassan Kamal, BSE Consultants, stated that he has reviewed staff’s comments and he agrees with the conditions. He reported that they have secured a permit for the gopher tortoise relocation. Mr. Kamal said the decision to make the streets private was not done to be clever. It wasn’t about access, rather it was a reaction to the end user. Buyers in the current market want a gated community. He clarified that although the proposal doesn’t guarantee a connection, it doesn’t exclude one either.

Mr. Kamal said he has no objection to providing a disclosure in the public records that these are private streets. The subdivision will be a private community with a homeowners’ association. They will have the ability to collect fees and establish a reserve fund for maintenance, including roadway maintenance. It will be highly unlikely that the residents will ever ask the city to take over the roads.

In response to Mrs. Poole, Mr. Kamal said their gopher tortoise permit is considered a take permit. If they find animals on the site, they have the ability to relocate. Mrs. Poole said she thought “take” meant that the tortoises could be bulldozed. Mrs. Braz said no and agreed that “take” means that the tortoises must be moved.

At this point, Council took a short recess to allow the attorney time to write an additional stipulation regarding the disclosure statement.

Recessed: 11:47 p.m.
Reconvened: 11:54 p.m.

Mrs. Wysor read the following proposed stipulation prepared by Attorney Gougelman:

- e. A disclaimer shall be placed on the recorded plat and recorded in the public records of Brevard County as a separate instrument, advising Pine Creek

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Subdivision lot owners that internal circulation roadways of the subdivision are private streets maintained at the private expense of the subdivision lot owners and not at public expense. The disclaimer shall further advise that the city shall not accept maintenance responsibility of the subdivision internal circulation roadways at public expense, unless a road is built from Indian Oaks Drive across Tract K with a bridge over the drainage right-of-way to the west of the subdivision, all at the private expense of the Pine Creek Subdivision lot owners.

Mr. Kamal expressed concern with the requirement for a bridge and said that a culvert may do the job. Mr. Hill said he would be surprised if a culvert were able to handle the water. Attorney Gougelman said the preliminary plat should be approved with this stipulation with the understanding that, prior to the final plat, the City Engineer and City Manager will determine whether the language can be altered to require a bridge or a culvert.

Moved by Hand/E. Palmer for approval of the preliminary plat for Pine Creek Subdivision with the stipulations proposed by the Planning and Zoning Board plus the additional stipulation "e." Motion carried unanimously.

16. ORDINANCE NO. 2001-58 (Z-2001-915): (Public Hearing/First Reading) A proposed ordinance to change the zoning density on an approximate 1.14-acre parcel, zoned R-2 (Cap 5) (One-, Two-, and Multiple-Family with a cap of five units per acre) to R-2 (Cap 6) (One-, Two-, and Multiple-Family residential with a cap of six units per acre), located on the east side of Pineapple Avenue, east of the intersection of Riverdale Drive. (Owners/applicants, Rudolf Grosse, Jr. and Herbert R. Grosse) (P&Z 10/25/2001)

Attorney Gougelman read Ordinance No. 2001-58 by title.

Ms. Braz briefed Council. The property was originally zoned R-1A and was changed to the current zoning under Ordinance No. 80-77 on December 23, 1980. The original request was for 10 units per acre. After consideration of the request, Council approved a density of five units per acre. The vote in favor of 10 units per acre failed 3 to 4. The property was originally included with several other properties being considered for rezoning. Three other properties to the south were removed from the request. The existing zoning was approved prior to the adoption of the Comprehensive Plan in 1988. The property now contains five units (two duplexes and a single-family structure).

The adopted Future Land Use is Low Density Residential. This land use limits densities to no more than six units per acre. The five units on the 1.14-acre site result in a total density of 4.39 units per acre. The property to the north is zoned R-1A with a single-family home. The property to the south is zoned R-1A with a single-family home. The properties to the west across Pineapple Avenue are zoned R-1A and contain single-family homes, a mobile home park and an apartment complex. The mobile home park and apartments are non-conforming uses. This property is not a platted lot. The site is within the Eau Gallie area where the city has been working to improve the environment and reduce crime. Approval of this request would require the correction of a drainage problem. It would also create an additional rental unit in the area.

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A building setback of a minimum of 43.6 feet is provided from Pineapple Avenue. Code permits a setback of 53 feet from the centerline of Pineapple Avenue. The setback from the centerline of Pineapple Avenue is 76.6 feet. A 35-foot rear setback is required with a setback of 55 feet provided from habitable buildings and a setback of 25 feet from the utility shed. Side setbacks of 13.7 feet and 21.4 feet are provided. Code requires a side setback of 25 feet when adjacent to single family uses. This setback is non-conforming.

Drainage on the parcel appears to be directed straight into the Indian River Lagoon. There appears to be no on site retention to treat water before discharging into the river. This drainage needs to be rectified before future development or redevelopment is permitted on the property.

The applicants are seeking the change so that they can develop an additional unit on the property and realize the full development potential of the site as permitted under the Comprehensive Plan Future Land Use Element. The proposed change will not necessarily have an adverse impact on adjacent properties since only one new unit, generating an average of eight additional daily trips, could be constructed on this site. This section of Pineapple Avenue is operating well within the adopted level of service. The existing five units are connected to central sewer. The sewer line is located within the Pineapple Avenue right-of-way.

Construction of the additional unit would have to be consistent with the existing Land Development Regulations including parking and drive aisle requirements, building setbacks and height restrictions, sidewalks and drainage retention. If permits are submitted to provide an additional unit, the improvements must be provided. There appears to be debris stacked behind the southerly unit and a boat is stored on the property that appears inoperable. While not a density issue, the potential Code problems and property maintenance issues should be corrected. There are two storage/utility buildings on the property. These should be used to store maintenance materials, etc.

There appears to be no environmental issues on the property except the issue of untreated stormwater discharge directly into the lagoon.

The Planning and Zoning Board and staff recommended approval with the findings listed in the agenda package and the following conditions:

- a. A maximum of six units shall be permitted on the 1.14-acre (Tax Parcel 514) development site.
- b. In conjunction with the development of a sixth unit on the property, the site shall be modified to bring the total site into compliance with the City Code and the Land Development Regulations including drainage, parking, handicapped accessibility, and property maintenance.

Rudolf Grosse, 2557 Pineapple Avenue, said he intends to remove the two storage structures, stabilize the bank area and add swale areas for drainage. He agreed with the

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stipulations.

Mrs. Poole expressed concern with the previous stipulation that there only be five units per acre. Now the request is to change the zoning to six units per acre.

Mr. Grosse explained that previously they were granted five to allow the construction of the other duplex. They were told that when they were ready to build more, they would need to return. The city did not want five because they did not want a high structure.

There were no other comments from the public.

Moved by E. Palmer/C. Palmer for approval of Ordinance No. 2001-58 subject to the stipulations. Motion carried unanimously.

17. ORDINANCE NOS. 2001-59, 2001-60, AND 2001-61 (AR-2001-133/CPA-2001-03/Z-2001-916): (Public Hearings/First Readings) Proposed ordinances to annex 5.96 acres including right-of-way; establish a mixed-use Commercial/Low Density Residential land use on two parcels totaling 5.422 acres; and establish C-1 (Neighborhood Commercial) zoning on a 2.474-acre parcel and C-2 (General Commercial) zoning on a 2.948-acre parcel, located on the south side of Eber Road, west of the intersection of Dairy Road. (Owners, A&B Trust and O&O Properties, Inc.; applicants, Alan Altshuler and D. Glen Outlaw of O&O Properties, Inc.) (P&Z 10/25/2001)
- a. Ordinance No. 2001-59: A proposed ordinance to annex the property.
 - b. Ordinance No. 2001-60: A proposed ordinance to establish a mixed use Commercial/Low Density Residential land use on two parcels totaling 5.422 acres.
 - c. Ordinance No. 2001-61: A proposed ordinance to establish C-1 zoning on a 2.47-acre parcel and C-2 zoning on a 2.948-acre parcel.

Attorney Gougelman read the three ordinances by title.

Ms. Braz briefed Council. The properties are part of the Florida Indian River Land Company Plat (Plat Book 1, Page 164). The properties are vacant and are zoned BU-1-A (Restricted Neighborhood Retail Commercial) by Brevard County. Originally part of Lot 16 of the Florida Indian River Land Company, the lots have been parceled into smaller properties.

The property owners are seeking the annexation to receive city services. One property owner has proposed an office/retail center on the property proposed for C-1 zoning. Upon development, sewer service will be provided to the site. The adjacent unincorporated developments are on septic tanks.

The site has a mixed-use land use designation by Brevard County and is zoned BU-1-A. This zoning provides for similar uses for what the applicants are requesting. The property to the west was recently developed as a single-family subdivision. This property is zoned RU-1-11 (Single-Family Residential). The property to the south consists of a fraternity house

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zoned RU-2-4 (Low Density Multiple Family Residential up to 4 UPA) by Brevard County. The property to the east, across Dairy Road, is zoned R-2 (Cap 6) and consists of the developed South Oaks Subdivision. A single-family home, zoned SR (Suburban Residential), and a church, zoned AU (Agricultural Residential), are located to the north across Eber Road.

Under the Joint Planning Agreement, the county provided comments. The county comments do not seem to take into consideration that the property is located on a four-lane arterial road and a collector road, which has been designated to be four-laned. The proposed C-1 and C-2 zoning are very similar to the existing county BU-1-A zoning and the C-1 zoning will provide that buffer between the more intense proposed C-2 zoning and the residential zoning in the area. Also, depending on the specific use developed on the C-2 zoned lot, additional buffer may be required. The applicant wishing to annex the parcel on the corner has the opportunity to request a conditional use for gasoline sales under the BU-1-A. He indicated that he wanted to have the same opportunity if he annexed into the city. C-2 will allow gasoline sales with a conditional use but gasoline sales are prohibited in C-1. No conditional use is being requested at this time.

City staff believes that commercial land use would be more appropriate for the corner parcel proposed for C-2 zoning than a mixed use because this land use and the possible uses permitted under C-2 zoning and intended for possible development by the property owner will better fit with Objectives and Policies in the Future Land Use Element; in particular, Objectives 1 and 6. Therefore, the city recommends a slightly different land use than requested by the applicant.

The proposed land use is consistent with and identical to the established county land use of properties in the immediate vicinity of the site. The proposed zoning will substantially match the zoning on the properties to the north of the site. This is similar to the zoning maintained by the county. One of the applicants has provided a site plan for an office/retail center that is currently undergoing administrative review in the Engineering Department. The site will be constructed in accordance with City of Melbourne Land Development Regulations.

The Planning and Zoning Board and staff recommended approval of AR-2001-133 with the findings listed in the Council package.

The Planning and Zoning Board and staff recommended approval of CPA-2001-03, establishing a Commercial/Low Density Residential mixed land use designation on a 2.474-acre portion of Lot 16 (Tax Parcel 750), and Commercial Land Use on a 2.948-acre portion of Lot 16 (Tax Parcel 771) Florida Indian River Land Company Subdivision with the findings listed in the Council package.

The Planning and Zoning Board and staff recommended approval of Z-2001-916, establishing C-1 (Neighborhood Commercial) zoning on a 2.474-acre portion (Tax Parcel 750) of Lot 16, Florida Indian River Land Company Subdivision and C-2 (General Commercial) zoning on a 2.948-acre portion (Tax Parcel 771) of Lot 16, Florida Indian River Land Company Subdivision with the findings listed in the Council package.

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Mrs. Poole referenced the correspondence in the package from Todd Corwin, Brevard County Planner, which in part states "...the subject property seems to be a more appropriate location for less intense commercial uses rather than general commercial or heavy commercial uses..." She said it seems as if the current county zoning and proposed city zoning aren't similar based on this information.

Mrs. Braz referenced her analysis that is included in the agenda package. She said she does not believe the county is right. She added that perhaps it is slightly more intense; however, the area has changed. Additionally, the city is offering sanitary sewer and in the county they would have to be more restricted because of utilities.

Mrs. Poole recommended that we provide the sanitary sewer without annexation. Mrs. Braz said that has not been the city's policy. Mrs. Poole commented that it would provide revenue. Mr. Hill clarified that sanitary sewer is not a money making venture for the city. He pointed out that another advantage to annexation would be that the city's rules would apply during development of the property.

Mrs. Poole stated that it sounds like we are doing this in order to provide for future annexation in the area. Mr. Hill replied that unless we take the steps to provide sanitary sewer, there is a potential for septic tanks to be installed.

The applicant, Glen Outlaw, was present.

There were no comments from the public.

Moved by Hand/Walker for approval of Ordinance No. 2001-59. Motion carried unanimously.

Moved by Walker/E. Palmer for approval of Ordinance No. 2001-60. Motion carried unanimously.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2001-61. Motion carried unanimously.

18. ORDINANCE NO. 2001-62 AND SITE PLAN APPROVAL (CU-2001-11/SP-2001-06/CAUSEWAY CENTER): (Public Hearing/First Reading) A proposed ordinance for a conditional use for a building height of greater than 80 feet and site plan approval for an office/retail building on eight platted lots consisting of approximately 1.8 acres on the north side of New Haven Avenue and the south side of Strawbridge Avenue, east of U. S. 1. (Owner/applicant, Hynes Properties, LLC and representative, David T. Menzel) (P&Z 10/25/2001)

This item was postponed at the beginning of the meeting (immediately following the City Manager's Report).

Mrs. Hand pointed out that it was past midnight. Mayor Buckley recommended that Council proceed for a couple more items.

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19. SITE PLAN APPROVAL (SP-2001-08/UNDERILL CONCEPTUAL OFFICE CAMPUS):
(Public Hearing) A request for a site plan approval on an approximate 12.533-acre parcel consisting of portions of eight lots of the Indian River Groves and Gardens Subdivision, located on the north side of Eau Gallie Boulevard east of the intersection of Sarno Road and Trent House Drive. (Owners, H. Underill II and James H. Pruitt, Trustee, and applicant, Landhandlers of Central Florida, Inc.) (P&Z 10/25/2001)

This item was heard after item 21.

Ms. Braz briefed Council. The vacant property was originally part of the Indian River Groves and Gardens Subdivision. The property has been zoned C-P (Commercial Parkway) since establishment of the City in 1969.

The property is zoned C-P and has an adopted future land use designation of Commercial. The property behind the proposed office complex is the Magnolia Lakes Subdivision, zoned R-1B with a Low-Density Residential land use. The property to the north and south along Eau Gallie Boulevard is vacant and is zoned C-P while the property across Eau Gallie Boulevard is zoned C-P and M-1 and is the site of Dictaphone and a vacant commercial zoned lot.

The proposed phased plan of development consists of 16 office buildings, 5,000 square feet each, in a campus setting for a total of 80,000 square feet. A total of 336 parking spaces is proposed. Two driveway access points will be provided to/from Eau Gallie Boulevard with a cross access easement and driveway that will provide for additional access to Trent House Drive. Access to Trent House Drive (located west of the site) will allow for access to the signalized intersection at Sarno Road and Eau Gallie Boulevard. The main driveway in the center of the plan will include deceleration turn lanes. A stormwater retention area will be provided on the easterly and central portion of the property with outfall into the enclosed drainage system within Eau Gallie Boulevard. The rear building setbacks exceed the Code and Comprehensive Plan required setbacks for this use. The buildings will be setback at least 80 feet from the rear lot line. The Comprehensive Plan requires at least a 55' setback for buildings, dumpsters, and other structures. A six-foot high opaque fence will be erected along the rear property line. The interior landscaping proposed exceeds that required by Code.

The environmental impact assessment report reveals that the site is covered with a thick canopy of palmetto, gall berry, and longleaf pine. The site will be substantially filled so it is highly unlikely that trees can be saved. The report did not indicate that there are active gopher tortoise burrows but a full evaluation was not conducted. A full gopher tortoise survey will be required and if any are located on the site a permit will be required from the Florida Fish and Wildlife Conservation Commission to relocate or take tortoises.

The proposed plan complies with the Zoning Code and Land Development Regulations. The proposed development is harmonious to adjacent uses and the adjacent zonings.

The Planning and Zoning Board and staff recommended approval of SP-2001-08, Site Plan

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for Underhill Conceptual Office Campus, prepared by Engineering To The Max of Cocoa, Florida, consisting of a one-sheet plan with Project No. 2001-07-03, dated 7/16/2001, and with a stamped revision date of 10/18/2001, with the findings listed in the agenda package and the following conditions:

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

Mrs. Poole asked if an Environmental Impact Assessment Report has been completed. Mrs. Braz said yes; however, further evaluation is required for the gopher tortoises.

The applicant, Buz Underhill, was present.

Moved by Contreras/E. Palmer for approval of SP-2001-08 subject to the stipulations. Motion carried. Mrs. Poole voted nay.

20. RESOLUTION NO. 1729: A resolution and maintenance agreement with the Melbourne Airport Authority to confirm acceptance of maintenance responsibilities for Broadband Drive.

From the agenda report. This is the proposed acceptance of Broadband Drive as a public roadway. The Melbourne Airport Authority contracted for construction of this roadway that runs north/south from Hibiscus Boulevard to NASA Boulevard. The road was partially funded by grants. A grant stipulation was that the road be a public road maintained by the city. The road construction has been completed and conforms to city standards.

The roadway crosses Airport property and is not located in a dedicated right-of-way. The proposed agreement defines that the city will accept the roadway for maintenance purposes. Adopting the resolution confirms approval of the agreement and naming the road Broadband Drive. This is important in order to be included in the County Emergency 911 system.

Attorney Gougelman read the resolution by title.

Moved by E. Palmer/Contreras for approval of the resolution and the maintenance

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agreement. Motion carried unanimously.

21. COUNCIL ACTION RE: Discussion to determine whether Council should publicly review the evaluations of the City Manager and City Attorney. (Requested by Council 10/23/2001)

Mrs. Poole recommended that Council continue to publicly conduct the reviews. Council Members Contreras and Hand and Vice Mayor Cheryl Palmer suggested the evaluations be completed by each member and submitted to the City Clerk. Mayor Buckley said the Airport Authority members turn in their evaluations to the Chairman and he talks to the Director of Aviation.

Moved by Walker/Hand to conduct the evaluations privately. Each member must complete and turn in a copy of the evaluation to the City Clerk. Motion carried. Mrs. Poole voted nay.

Later in the meeting, Council agreed to submit their evaluations to the City Clerk by November 26. The Mayor asked that the issue of pay appear on the November 27 agenda.

Moved by Buckley/Walker to continue the meeting and handle items 19 and 22. Motion carried. Mrs. Poole voted nay.

22. COUNCIL ACTION RE: Appointment of Council Members

a. Appointment of three members to the Airport Authority.

Moved by E. Palmer/C. Palmer to reappoint Mayor Buckley, Council Member Ed Palmer, and Council Member Loretta Hand. Motion carried unanimously.

b. Appointment of Vice-Mayor

Mrs. Palmer nominated Mr. Contreras, Mrs. Poole nominated Mr. Palmer, and Mrs. Walker nominated Mrs. Hand. There were no other nominations.

The roll call vote was:

Contreras: E. Palmer, C. Palmer, and Buckley

E. Palmer: (Mrs. Poole initially voted for Mr. Palmer; however, following the vote, she changed her vote to Mrs. Hand.)

Hand: Contreras, Poole, Walker, and Hand

Appointed: Loretta Isenberg-Hand

23. COUNCIL ACTION RE: Board Appointments

Moved by Contreras/Poole to postpone this item until the November 27 meeting. Motion carried unanimously.

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- a. Building Board of Adjustment and Appeals – one alternate member
- b. Citizens' Advisory Board – one regular member and one alternate member
- c. Library Board – two regular members
- d. Melbourne Housing Authority – appointment of one public housing tenant member and one regular member
- e. Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee – one regular member
- f. Zoning Board of Adjustment – two regular members and two alternate members

24. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

25. ADJOURNMENT

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

The meeting adjourned at 12:37 a.m.

City Clerk – 11/19/2001

Approved by Council: _____