

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
NOVEMBER 27, 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 Reverend Anne Shedden-Willis, Crossway Community Church.
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
	Loretta Isenberg-Hand	Vice Mayor, District 6
	Richard Contreras	Council Member, District 1
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	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

Mayor Buckley presented a proclamation to Director of Finance Amy Elliott in recognition of the 20th anniversary of her employment with the City of Melbourne.

5. APPROVAL OF MINUTES – November 13, 2001 Regular Meeting

Moved by Walker/Contreras for approval. Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mr. Hill reminded Council that the Christmas Light Parade is scheduled for December 8 at 6:00 p.m.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. COUNCIL ACTION RE: 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. (Postponed by Council 11/13/2001)

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Mr. Hill briefed Council. This item was postponed at the last meeting to allow staff time to determine if the contract could simply be extended. Staff determined that an extension could result in higher prices and that the current contract is not eligible for further extension. Joining an existing contract is the best alternative at this point. The item will be reviewed next summer. The price is slightly more than what we are currently paying; however, it is significantly less than what other jurisdictions are paying. The recommendation is for approval.

Moved by E. Palmer/Hand for approval of the contract with H&H Liquid Sludge Disposal, Inc. of Ft. White, Florida at a price of \$7.68 per cubic yard (piggybacking an existing Orange County, Florida contact). Motion carried unanimously.

9. COUNCIL ACTION RE: A Development Order relative to denial of SP-2001-04 for an apartment complex (student housing) and a parking garage/lot on a 10.22-acre portion of the Florida Tech campus, zoned I-1 (Institutional), located west of Babcock Street, south of Ruffner Road and east of Country Club Road. (Council Action 11/13/2001)

From the agenda report: At the last meeting, Council denied Florida Tech's Site Plan for dormitory apartments and directed the City Attorney to prepare a final order containing findings of fact and conclusions of law.

The proposed final order represents Council's reasons for denial of the site plan. One issue that Council will need to address is the issue of administrative *res judicata* (basically asking the Council to hear the same matter again) which was raised by the residents at the public hearing. The City Attorney believes the doctrine of *res judicata* is not applicable since the applicant presented new facts in direct response to concerns raised by Council on the initial plan. The City Attorney has discussed this in paragraphs two through six of the order.

Attorney Gougelman reviewed the order with Council.

Moved by Poole/Walker for approval of the Development Order.

Mrs. Poole stated that the order is factual and contains Council's reasons for denial based on the evidence and testimony presented November 13. She added that the site plan presented is inconsistent with the Comprehensive Plan and the Land Development Code.

The question was called. The roll call vote was:

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

Nay: Contreras and Buckley

Motion carried.

10. COUNCIL ACTION RE: Board Appointments (Postponed by Council 11/13/2001)

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

Moved by E. Palmer/Walker for reappointment of Carol Marx. Motion carried unanimously.
(Two-year term ending 12/13/2003)

- b. Citizens' Advisory Board – one regular member and one alternate member

Moved by Poole/C. Palmer to appoint George C. Paul as a regular member. Motion carried unanimously. (Unexpired three-year term 11/27/2001 – 11/11/2003)

Moved by Hand/E. Palmer to appoint A. Richard Gowallis and Lynn Margaret Henry as the alternate members. Motion carried unanimously.

Appointed first alternate: A. Richard Gowallis (Unexpired three-year term 11/27/2001-11/11/2003)

Appointed second alternate: Lynn Margaret Henry (Unexpired three-year term 11/27/2001 – 11/11/2004)

- c. Library Board – two regular members

Moved by Poole/E. Palmer to reappoint Marilyn Shulman. Motion carried unanimously.
(Five year term ending 12/2/2006)

Moved by C. Palmer/Contreras to appoint Janet Sullivan. Motion carried unanimously.
(Unexpired five-year term ending 12/2/2002)

- d. Melbourne Housing Authority – one public housing tenant member and one regular member

Mayor Buckley reported that in accordance with the State Statutes, he reappointed Hallie Malone and Johnnie Mae Scott. He noted that Council needs to confirm the reappointment of the members.

Moved by Walker/Hand to confirm the Mayor's reappointment of Hallie Malone and Johnnie Mae Scott. Motion carried unanimously.

Reappointed as public housing tenant: Hallie A. Malone (Four-year term ending 12/8/2005)

Reappointed as regular member: Johnnie Mae Scott (Four-year term ending 12/8/2005)

- e. Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee – one regular member

Mayor Buckley reported that Tibby Parker telephoned the City Clerk and indicated that she was withdrawing her name from consideration.

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Vice Mayor Hand nominated Ralph Sanders and Council Member Cheryl Palmer nominated Marcella Mathers Nail. There were no other nominations.

The roll call vote was:

Sanders: Contreras, Walker, Hand, and Buckley

Nail: E. Palmer, Poole, and C. Palmer

Appointed: Ralph Sanders (Unexpired one-year term ending 6/11/2002)

f. Zoning Board of Adjustment – two regular members and two alternate members

Moved by E. Palmer/Contreras to reappoint Chip Allen as a regular member. Motion carried unanimously. (Three-year term ending 12/2/2004)

Moved by Hand/C. Palmer to reappoint Brenda Burgener. Motion carried unanimously. (Three-year term ending 12/2/2004)

Moved by Contreras/Walker to reappoint Jamie McKeever as an alternate member. Motion carried unanimously. (Three-year term ending 12/26/2004)

Moved by E. Palmer/C. Palmer to appoint John Womack as the second alternate member. Motion carried unanimously. (Unexpired term plus full three-year term 11/27/2001 - 12/26/2004)

11. ORDINANCE NO. 2001-58 (Z-2001-915): (Public Hearing/Second 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) (First Reading 11/13/2001)

Attorney Gougelman read Ordinance No. 2001-58 by title. There were no public comments.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2001-58.

Mrs. Poole stated that she would not normally vote to increase density; however, one of the stipulations provides that the total site shall be brought into compliance with the City Code, including drainage, parking, handicapped accessibility, and property maintenance.

The question was called. The roll call vote was:

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

Nay: None

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Motion carried unanimously.

12. ORDINANCE NOS. 2001-59, 2001-60, AND 2001-61 (AR-2001-133/CPA-2001-03/Z-2001-916): (Public Hearings/Second 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 Boulevard, 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.) (First Reading 11/13/2001)

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

Moved by C. Palmer/Hand for approval of Ordinance No. 2001-59. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2001-60.

Mrs. Poole noted that although county staff said this would allow for more intense uses, the site would connect to the central sewer system (as opposed to septic tanks).

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Walker/E. Palmer for approval of Ordinance No. 2001-61. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

13. COUNCIL ACTION RE: Change Order No. 5 to contract for Lake Washington Water

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Treatment Plant Improvements, Project No. 97371, Poole and Kent Company, Miami, Florida – \$106,560.

Mr. Hill reviewed the agenda report. The purpose of this proposed change order is to redefine the time for project completion and to pay the contractor for additional work.

Establishing a new date for completion is necessary for two reasons. First, the contractual time for completion of Schedule A plant improvements was October 15, 2001. The contractor did not meet this schedule and may be assessed liquidated damages of \$3,000 per day. Second, the contractor has made a claim that his work was delayed by 56 days because of problems obtaining a county building permit for the project. By establishing a new date for completion of Schedule A improvements of December 10, 2001, these two issues more or less offset each other. Staff believes this is a reasonable solution. Staff believes the delay was indeed caused by county permitting.

The Schedule A improvements are the majority of the project construction including the Actiflo treatment process. This process has to be tested and put into operation before demolition of some existing filters can occur. Then new, Schedule B, filters can be constructed in their place.

Paying the contractor for additional work is also related to the requirements of Brevard County and its issuance of building permits for the project. County building officials and consultants CH2M Hill did not interpret the building codes the same way. The county has required additional fire protection measures that our engineers did not provide in their design. CH2M Hill representatives assert that they have designed similar facilities throughout the state with no difficulties and they did not concur with the county's interpretations. Discussion of this matter took place over a several month period. However, the final interpretation of the building code is that of the building official. New facilities had to be constructed, primarily related to building separations and added sprinkler systems.

The cost of all the building permit required work is \$106,560. This figure was negotiated down from the contractor's original proposal of \$161,810 by CH2M Hill and city staff. Funding for this work is available from the balance in the project budget.

The cost of all change orders including this proposed change order will be \$416,480. This amount is 2.0% of the \$20,700,000 total construction cost for the water plant project.

Moved by Poole/E. Palmer for approval of Change Order No. 5 to the Poole & Kent Company contract to establish December 10, 2001 as the new date for completion of Schedule A improvements and to increase the contract amount by \$106,560. Motion carried unanimously.

14. COUNCIL ACTION RE: Consent Agenda

Moved by Hand/E. Palmer for approval of 14 "a – e" as recommended.

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Mr. Hill responded to questions regarding item “b”. The item was not removed from the agenda.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Purchase of composite meter boxes for Water/Sewer Operations Division, Ferguson Underground, Orlando, Florida – estimated annual cost of \$146,150.
 - b. Purchase of replacement 800 MHz radios for the Fire Department, Communications International, Inc., Vero Beach, Florida - \$77,303.11.
 - c. Annual contract to provide Zetag 7878FS40 Polymer for the Wastewater Treatment Division (@ unit price of \$97/lb), Fort Bend Services, Inc., Stafford, Texas - \$32,082.75.
 - d. Annual contract for mowing and maintenance of north areas, (Green Side Up, Melbourne - \$36,134 and Stanley Grounds Maintenance, Melbourne - \$20,800) – total cost \$56,934.
 - e. Contract for Harbor City Golf Course Greens Improvements, Project No. 02400, J.C.M. Group, Lake Worth, Florida - \$21,160.
15. ORDINANCE NO. 2001-63 (A&V #244): (Public Hearing/First Reading) A proposed ordinance to abandon and vacate the street right-of-way of Academy Drive except for the south 163 feet. (Requested by Florida Air Academy)

Attorney Gougelman read Ordinance No. 2001-63 by title.

Mr. Contreras disclosed that on May 24, 2001 he met with James Dwight and discussed the vacating of Academy Drive. Mrs. Palmer said she visited Mr. Dwight at the campus around the same time. Mr. Dwight explained the school’s plans. Mayor Buckley added that he was also at the school around the same time and received an explanation of the plans.

From the agenda report: The petitioner is Florida Air Academy located at 1950 S. Academy Drive. Florida Air Academy owns the property on both sides of the roadway to be vacated.

This section of Academy Drive begins 163 feet north of New Haven Avenue and runs north to Espanola Way. This is the section that bisects the campus of the school. This is an improved right-of-way with paved street and sidewalks. The petitioner cites safety concerns for the students as the reason for this request. Since the street bisects the campus, students do cross the street frequently to change classes.

The petitioners provided plans showing how the roadway would be modified if the request is approved. They also provided a traffic study conducted by a traffic engineering firm.

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In 1994 a similar request was denied. The main reason for denial was that the street is used by the general public. Some traffic calming measures were recommended. These have apparently not been as successful as hoped. Other concerns such as utility access have typically been dealt with by retaining a utility easement over the entire width of the right-of-way.

Two factors to consider are the safety of the students and the use of the street by the public. It is not essential that the street be open to the public since Airport Boulevard can provide access between Espanola Way and New Haven Avenue, and Airport Boulevard is only 250 feet east of Academy Drive. Academy Drive serves as a shortcut and as a means to avoid the traffic signal on New Haven.

The petitioner's presentation will provide arguments for vacating the right-of-way and will show what plans they have for the campus. Property owners within 500 feet of Academy Drive have been notified by mail of the meeting, and their input on this issue will be informative as far as public use of the road. Over the last month, Council received a number of letters from various individuals supporting the request, which were not duplicated in the package.

The request is an unusual one in that the street is currently operating as a publicly traveled way. Council needs to consider the respective use of the roadway and safety/access issues of the school.

Phil Nohrr, attorney representing Florida Air Academy, explained the role and mission of FAA. He reported that the academy currently has 400 students – 320 board and 80 are day students. It is the largest private boarding school in the Southeast.

Mr. Nohrr elaborated on the information contained in the agenda report. He noted that the first 163' abuts a commercial development on the east side. The application does not include the first 163'. It starts at the property line of the commercial development and proceeds north. That property owner has consented to the request.

If the property is vacated, Mr. Nohrr indicated on two maps alternate routes that drivers would have to take. A traffic study has indicated that this will take an additional 17.4 seconds. He stressed the importance of safety for the students versus an additional 17.4 seconds of travel time. He commented that this will have a minimum or non-impact on the neighborhood.

The request involves safety. Academy Drive bisects the campus and students are moving back and forth all day long. He reported on the traffic calming measures that were taken and said they have not worked. There have been a number of close calls. Students cross from 6:00 a.m. until 10:00 p.m.

Mr. Nohrr stated that the traffic study indicates there are 487 trips on Academy Drive. The road is used as a shortcut by drivers wishing to avoid the intersection. Sixty percent of the 487 trips are generated by FAA. Academy Drive is a convenience, not a necessity.

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There is no unique service provided by that street. Mr. Nohrr pointed out that approval of the request would also provide an opportunity for FAA to better control internal security.

Mr. Nohrr distributed information regarding the accreditation process that FAA must go through. That information indicates that the school has been encouraged to pursue the vacating request.

Mr. Nohrr concluded by referencing the letters of support (previously distributed to Council). He stated that Council has an opportunity to take preventive action.

Jackie Lepper, 2012 S. Goff Place, reported that she retired last spring after more than 25 years of teaching at FAA. She noted that the safety of the students was always a major concern. Over the years, she has seen an increasing danger to the students. She asked Council to take action to prevent a tragedy. In the mid 1970's Academy Drive was a lightly traveled roadway. Today it runs through the campus and the students regard it as a driveway. Hundreds of students cross every hour changing classes. Ms. Lepper agreed that the steps taken to slow traffic have not been effective. She asked Council to be wise and vacate Academy Drive.

Dr. Ronald Richardson, 1704 Airport Boulevard, said he has been at this location for 16 years. He stated that the roadway is not needed as a throughway and it would be safer for the campus if it were closed. As a business owner close to FAA, he stated that he totally supports closing Academy Drive.

Michael Gallagher, 245 Lago Circle, West Melbourne, President of the Parent Teacher Student Association at FAA, stated that his son is a student at the school. He asked Council to strongly consider the safety of the students and vote to vacate this portion of the roadway.

Timothy Lucas, Merritt Island, President of the senior class at FAA, informed Council that he and his brother cross Academy Drive at least five – six times per day. He stated that the student body understands that this is not a small request; however, the request was made with only the best interest of the students in mind. He added that it would be impossible to recall the numerous times he has seen cars and trucks traveling recklessly through the area with little or no regard for the students. The minute inconvenience of having to drive around the school cannot compare with saving the life of a cadet in the future.

Jo-Ann Buckley, 3445 Shady Run Road, Melbourne, said her son is a day student at FAA. She provides his daily transportation and is surprised at how fast cars go through the area. She asked Council to approve the request and make the school safer.

Betsy Farmer, Dowd Court, Palm Bay, Executive Director of the Space Coast Early Intervention Center, said the center has had a wonderful corporate partnership with FAA for years. Many cadets volunteer their time at the center with the children and it would be a tragedy to lose one of them to an accident. She stated that Council has an opportunity to prevent an accident.

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James Dwight, President, FAA, thanked Mayor and Council for their serious and thoughtful consideration of this matter. He said the students and faculty at FAA recognize that the action being requested is serious. However, they believe it will provide a safer living and learning environment. He added that he believes Council's actions will ultimately save a life. Mr. Dwight stressed that safety and security are top issues. The boys that attend the school are his responsibility and it is the school's duty to protect them. He asked Council to vote for the request and added that with all of his heart, he believes this is the right thing.

Lee Bohlmann, President of the Melbourne Palm Bay Area Chamber of Commerce, said she supports FAA in this request. The public outcry after an accident would be louder than a few citizens inconvenienced by the closure of the road. She asked Council to vote positively with safety as the main concern.

Charles Nash (law enforcement officer; address exempt) reported on the success his son has had attending FAA. He noted that he has been in law enforcement for 18 years in the county and he knows that people do not drive the way they used to. He is on Academy Drive every day and people do not drive safely on that road. Mr. Nash asked Council to approve the request and noted that other access is available; this will not inconvenience the residents.

Mike Fischer, 1915 Airport Boulevard and property owner at 1909 Airport Boulevard, encouraged Council to approve the ordinance.

James Bryant, 1705 Academy Drive, said he is opposed to the closing. He questioned why the city would give up this valuable asset. The city has nothing to gain; however, the school would receive an asset for free. Additionally, he questioned if foot traffic would be prohibited if the request is approved. He stated that would have a negative effect on the residents.

Continuing, Mr. Bryant said the school does not abide by the safety features that were put in place after the first request. Both sides of the street are solid with parked vehicles – private and unattended school buses. He does not believe FAA has done all it needs to do to make use of the safety features. He understands that the students are young; however, there is no excuse for not knowing what a street is. He suggested that the school is negligent in not teaching these young men to recognize the street for what it is and to cross with caution.

That concluded comments from the public.

Moved by Poole/C. Palmer for approval of Ordinance No. 2001-63.

Mayor Buckley said he has been in the area during lunch time. The students have a certain amount of time to eat, cross the street, and get to class. Many times they don't use the best caution; however, he noted that he is in favor of the vacating.

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Mrs. Palmer referenced the comment regarding the need to train young people to cross the street appropriately. She pointed out that she has noticed doctors not using the crosswalk when crossing Hickory Street.

Mr. Contreras asked if the intent is to close foot traffic. Mr. Nohrr said not presently; however, they are constantly looking at the issue.

In response to Mr. Contreras, Patricia Tice, Traffic Planning and Design, Maitland, discussed the traffic study and peak traffic times. Mr. Contreras pointed out that the vehicles exceeding 15 mph traveled the roadway between 3:30 p.m. and 10:00 p.m. Ms. Tice added that it is cut through traffic that does not live in the neighborhood. She added that one of the worst offenders is the driver of the UPS truck.

Mr. Contreras stated that he is an advocate of proactive rather than reactive; therefore, he supports the request.

Mr. Palmer said that the FAA students are a group of well disciplined young men. He commented that the safety of the students overrides any concern for inconvenience.

Mrs. Poole reported that she favored the proposal when it appeared before Council in 1994. She discussed the history of the academy.

Mrs. Hand said she also supports the request. She noted that the efforts made have not worked and she does not want to see someone killed or injured on this road.

Mr. Hill said that the ordinance would need to be revised prior to second reading to provide for easements.

Mr. Nohrr confirmed for Mr. Hill that FAA would provide landscaping and maintenance of landscaping on the portion of the roadway that is vacated.

The question was called. Motion carried unanimously.

Recessed: 9:07 p.m.

Reconvened: 9:18 p.m.

16. ORDINANCE NO. 2001-64 (Z-2001-917): (Public Hearing/First Reading) A proposed ordinance to change the zoning on the existing four platted lots consisting of 15.3 acres from R-A (Residential Holding District) to R-1B (Single-Family Residential) located on the east side of John Rodes Boulevard north of the intersection of Eau Gallie Boulevard. (Owners/trustees, Elting Storms and Buzz Underill; applicant, Forte Macauley Development Consultants, Inc.; and representative, Massimo Bosso) (P&Z 11/15/2001)

Attorney Gougelman read Ordinance No. 2001-64 by title.

Ms. Braz briefed Council. This property is part of the remaining portion of the old Indian River Groves and Gardens Subdivision. The property has been zoned R-A since

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adoption of the zoning code in 1972. The existing zoning was approved prior to the adoption of the Comprehensive Plan in 1988. The property is vacant and has never been developed.

The adopted future land use is Low Density Residential, which limits densities to no more than six units per acre. The existing zoning is consistent with the adopted Low Density Residential land use. The property to the north is zoned Planned Unit Development with a cap of 4.53 units per acre and is the Cypress Bend Subdivision primarily consisting of single-family homes on 50 foot wide lots. The property to the south is zoned Commercial Parkway and is the site of an office park and a vacant parcel. The property to the west across John Rodes Boulevard is the Pinewood Mobile Home Park and has an adopted land use of Medium Density Residential. The property to the east consists of the Magnolia Lakes Subdivision zoned R-1B with a Low Density Residential land use.

The applicants are requesting the rezoning in order to re-plat the subdivision into a subdivision with lots very similar in size to the subdivisions built to the east and to the north of this property. They are proposing a 66-unit subdivision on the property. The proposal should not have an adverse impact on adjacent properties since upon development of the site the subdivision must be constructed in compliance with the City Code, including the land development regulations. The development in this area has changed significantly over the years since the existing zoning was established. The residential development in the immediate area has developed with higher densities than permitted under the existing R-A zoning district and will have no adverse affect on adjacent properties. The existing zoning does not match well with or provide the harmony between districts that the proposed zoning will provide.

Council will consider the proposed plat for the Peachtree Pointe Subdivision after the second reading of the ordinance on December 11. The property and the proposed subdivision will consist of 66 lots (4.31 units per acre) with two proposed streets, one extending east from John Rodes Boulevard (Piedmont Circle) and one internal cul-de-sac (Buckhead Court). The access street will not align with the entrance to the Pinewood Mobile Home Park. A proposed retention pond (Tract C) will be located on the south central portion of the plat. The pond will outfall to the drainage ditch in the John Rodes Boulevard right-of-way to the west. Tracts A and B will be used for landscaping areas and a subdivision entrance sign. All tracts will be owned and maintained by the homeowners' association.

The applicant is requesting a variance from the subdivision requirement to connect to existing streets. City Code, Chapter 29, Section 29-6 (b)(1) b. and c., requires that a street connection be made to stub streets that are located adjacent to a parcel. The applicant for the adjacent Magnolia Lakes development was granted a variance and did not have to provide a street stub extension to this property although staff recommended against this request. An undeveloped street exists at the southwest corner of one of these lots.

The connection to the undeveloped Mosley Road would provide a connection that is in a different land use and zoning classification. If there were not a platted road in this area

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no connection would be required. It is also unlikely that the road will ever be constructed to the residential property line and may well be vacated as was the north section of Mosley Road. However, providing the connection will not substantially limit the applicant reasonable use of the land and is not necessary for the applicant to realize the preservation and enjoyment of a substantial property right. The Planning and Zoning Board voted 4-3 to deny the variance. The variance request will be part of the preliminary plat application scheduled for the next Council meeting.

The proposed rezoning is consistent with the Comprehensive Plan. The Planning and Zoning Board recommended approval of the request with the findings listed in the agenda package.

Mrs. Poole discussed the heavy traffic in the area and stated that the additional street connection needs to be made. Two entrances/exits are needed for safety reasons. Mrs. Braz replied that Mosley Road is not paved; it is a paper street.

Mrs. Palmer discussed the traffic flow and said if Mosley Road were paved, it would create a lot of problems.

Mayor Buckley asked if they would lose a lot if the connection is made. Mrs. Braz said no and added that they have an alternative design. She pointed out that this would place a road immediately behind Magnolia Lakes.

Mr. Contreras said he travels this area quite a bit and he doesn't think there is a traffic problem. He added that, if paved, Mosely Road would cause more of a hazard in the area. He does not think this is a good alternative.

Max Bosso, 1688 Hibiscus Boulevard, noted that the rezoning is the issue on this agenda. the variance request will come forward with the plat.

In response to Mrs. Poole, Mr. Bosso discussed the drainage and outfall. He noted that they are applying for a SJRWMD permit and will meet pre and post development runoff on the site.

Moved by Contreras/Hand for approval of Ordinance 2001-64. Motion carried unanimously.

17. ORDINANCE NO. 2001-65 (LDR-2001-08): A proposed ordinance to amend the Community Planning and Development Code to expand the duties and responsibilities of the Downtown Architectural Review Board (Chapter 10, Article III) to include the Eau Gallie Redevelopment Area. (Requested by City of Melbourne) (P&Z 11/15/2001)

Attorney Gougelman read Ordinance No. 2001-65 by title.

Mayor Buckley introduced the item. The Downtown Architectural Review Board has been in existence since the creation of the Downtown Melbourne Redevelopment Area in the early 1980's. The board reviews building plans, facades, color, design styles and signs in the Downtown area.

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The proposed change will expand the duties and responsibilities of the board to include the newly created Olde Eau Gallie Riverfront Community Redevelopment Area. The board membership will include members from the Eau Gallie area. Responsibility for the board will be moved to the Planning and Economic Development Department. The changes will ensure that new or redeveloped structures being considered in the Eau Gallie area are reviewed for compliance with standards similarly applied in the existing Downtown Melbourne area. Architectural styles differ very little in the two districts.

The Planning and Zoning Board made a finding of consistency and recommended approval of LDR-2001-08 in accordance with the findings listed in the agenda package.

Moved by Hand/E. Palmer for approval of Ordinance No. 2001-65. Motion carried unanimously.

18. ORDINANCE NO. 2001-66: (First Reading) A proposed ordinance providing for repeal of Chapter 8, Buildings and Building Regulations, and amending Appendix D by adding Chapter 13, relating to adoption of the 2001 editions of the Florida Building Code, Florida Plumbing Code, Florida Mechanical Code and Florida Fuel Gas Code for properties throughout the City. (Requested by City of Melbourne) (P&Z 11/15/2001)

Attorney Gougelman read Ordinance No. 2001-66 by title.

From the agenda report: The proposed changes reflect a totally new chapter, which will be placed in the Land Development Code, Appendix D, as Chapter 13. These changes are necessary to adopt a new Standard Building Code prepared by the state. The existing code was implemented in 1997. State officials have been working for three years to revise the code. The new state required standards take effect on January 1, 2002 or another date established by the Florida Legislature before that time. It is possible that the Legislature will change the implementation date when it meets during the upcoming special session next week. The Florida Building Code will supersede all local building codes.

The new code will be formatted differently than the existing Chapter 8. Article I is an introduction and Article II will specify the duties and responsibilities of the Code Compliance Division of the Fire Department. Article III, Building Code, establishes construction standards to meet certain wind speeds likely to occur under certain storms that have a high probability to strike this portion of the Florida coast. This provision seems to have invoked the greatest concerns of the construction community. Article IV – Article VII specifies the standards for the electrical code, plumbing code, mechanical code, and fuel gas code. Article VIII establishes the Building Board of Adjustment and Appeals and defines its duties, procedures and responsibilities.

Considerable effort has been made to determine the best approach for establishing wind speed lines for the city. The Florida Department of Community Affairs has determined wind speed contours for the state. Brevard County is generally in the area provided by 120 mile per hour contours to the west and a 130 mile per hour contour to the east.

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Information from the state indicates that unless a contour crosses a municipal boundary, a city need not adopt a wind speed line by ordinance. However, the information also states that the local jurisdictions are to establish lines using appropriate physical landmarks. The information also implies that interpretation mathematically should be made between the contour lines.

Building Official Al Beyer provided an analysis of the requirements. Mr. Beyer has recommended that the city establish 130 miles per hour as the wind speed for the beachside and 125 miles per hour for the mainland. Other area cities are considering similar speeds. The key issue is what happens between the contour lines. The Home Builders and Contractors Association believes that the 120 mile per hour contour should prevail throughout the city.

The Building and Construction Advisory Committee reviewed the proposed changes and recommended a reduction in the wind speed on the mainland from 125 mph to 120 mph. The board's recommendation is incorporated in the proposed ordinance. The Planning and Zoning Board approved the proposed changes without comment on the wind speed issues.

The changes could affect affordable housing. At the Building and Construction Advisory Committee meeting there were comments that the higher design standards would increase the cost of housing. It is estimated this could range from \$835 (at 120 mph) to \$1,355 (at 130 mph). It is possible that the higher design standards could result in lower insurance premiums on these houses. Housing costs in Brevard County and Melbourne are still lower than the state wide average.

The Planning and Zoning Board made a finding of consistency and recommended approval of LDR-2001-07 in accordance with the findings outlined in the agenda package.

Building Official Al Beyer briefed Council. Following several significant storms in Florida, the Florida Building Commission was charged with developing and implementing a new uniform building code for the State of Florida. Emphasis was placed on uniformity and accountability. Mr. Beyer noted that he was required to establish wind speed zones for the City of Melbourne. He needed to establish the lines using physical landmarks – major roads, canals, etc., wherever possible. The basic wind speed in miles per hour, for the development of wind loads, shall be determined from the Florida Building Code.

The concept is to develop a wind speed map for the county and municipalities that will allow the building official to properly administer the requirements for the code. Development began with the understanding that where a series of contours are shown, the magnitude of the basic wind speed tends to be dominated by large meteorological events. The wind speed of these large events has a tendency to decrease as events move farther over land. Wind speed maps were submitted for review and unanimously adopted by the Building Officials Association of Brevard County in August. The American Society of Civil Engineers has indicated its support for the methodology used in the development of the map.

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In conclusion, Mr. Beyer said he feels the 125 mph, not 120 mph, three second gust should be established for the mainland. The barrier islands should have 130 mph, three second gust. Additionally the wind exposure category for the mainland should be "B" and for the barrier island should be "C." The wind borne debris region will encompass the entire City of Melbourne.

Mrs. Palmer asked what the previous code specified. Mr. Beyer explained that it provided for a different means of calculation. Mr. Hill said the effect is that if we adopted less than 130 mph for the beachside, we would possibly be adopting a lesser standard than what we currently have. One hundred and twenty five for the mainland will be a slightly higher standard.

Mrs. Hand expressed support for going with the higher standard. She noted that we would be better covered.

Mr. Beyer confirmed for Mr. Palmer that signage would have to be constructed/erected according to the new standards.

Moved by Hand/Poole for approval of Ordinance No. 2001-66 with a revision to increase the wind speed zone on the mainland from 120 mph to 125 mph, three second gust.

A brief discussion followed regarding the effect on the cost of housing.

Mrs. Poole asked if insurance rates would be affected by not going with the higher standard. Mr. Beyer said that has been discussed. Mr. Palmer asked the Home Builders and Contractors position. Mr. Beyer said they previously indicated that we should establish 120 mph for the entire county and go with the lower wind contour. He added that he does not feel that is in the best interest of our community and citizens.

The question was called. Motion carried unanimously.

19. COUNCIL ACTION RE: A request for approval of the Collective Bargaining Agreement with Coastal Florida Police Benevolent Association (PBA) for the period October 1, 2001 to September 30, 2004.

Mayor Buckley referenced the memorandum from the City Manager indicating that the item needs to be withdrawn since the PBA failed to ratify the proposed agreement.

Moved by E. Palmer/Contreras to withdraw the item. Motion carried unanimously.

20. RESOLUTION NO. 1731: A proposed resolution in support of the Melbourne International Airport. (Requested by Council Member Ed Palmer)

Attorney Gougelman read Resolution No. 1731 by title.

Mr. Palmer reported that he would like for the county and each city to adopt a similar

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resolution supporting the use of the Melbourne International Airport. He noted that the Tourist Development Council is constantly emphasizing Orlando International Airport. As a county, we should take advantage of OIA; however, we should advertise our own facility in Brevard County. They say flights aren't adequate but they are never going to be adequate if we don't start using the airport. He would like to show Melbourne International Airport and the Tourist Development Council that the entire county is behind this endeavor.

Moved by E. Palmer/C. Palmer for approval of Resolution No. 1731. Motion carried unanimously.

21. COUNCIL ACTION RE: A proposed revised amendment to Wuesthoff Hospital's site plan stipulations.

From the agenda report: This is a proposed revision to a stipulation placed on the Wuesthoff Hospital site plan approval. The construction is planned with an accelerated completion schedule. Construction plans for the project are otherwise ready for approval.

Council approved the site plan for Wuesthoff Hospital at the Wickham Road site on February 27, 1997 with several stipulations. One matter which remains unresolved is the following stipulation:

The applicant shall provide a Traffic Corridor Improvement Agreement to fund improvements in the Wickham Road corridor. The costs of the improvements defined in the agreement shall not exceed the calculated total impact fee of \$297,277 for the 218,265 square foot hospital. The agreement, at a minimum, shall identify the optimal traffic flow improvement solution to this corridor, including the coordination of signals and the modification and/or addition of the existing closed loop system or the development of a separate closed loop system; responsibility for the financing; installation; upgrading of the proposed improvements by Wuesthoff Hospital, Mr. Cochran and the county; and restriction on the issuance of a certificate of occupancy for the hospital until completion and activation of the required traffic improvements. Such agreement shall be executed prior to or simultaneously with hospital construction plan approval. The agreement is subject to the approval of the Melbourne City Manager, City Attorney, and Brevard County.

Wuesthoff has submitted a traffic engineer report to the county that states sufficient warrants have been met to install a traffic signal at the southern entrance to the site. If the report is accepted by the county, installation would be permitted. Wuesthoff wants to install the signal and is also willing to provide a closed loop system interconnecting the new signal with the signals at Harper Road and Wright Avenue. Wuesthoff anticipates the signal to be operational by the time of the hospital opening.

Wuesthoff has been allowed to clear the site and install a stormwater system under permits specific to those areas. The project is at the point where progress will halt if the construction plans cannot be approved. Given the stipulation as written, those plans cannot be approved because an agreement has not been provided. However, the

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agreement at this point is moot given that Wuesthoff is proceeding with the hospital construction and simultaneously the consideration of the traffic signal.

To allow progress to continue Council consideration is needed of an amended stipulation to allow the hospital construction plans to be approved without the referenced agreement but with the following stipulation (which will also be designated on the plans):

The applicant shall install a traffic signal at its southern entrance and a closed loop system on Wickham Road interconnecting the new entrance signal with the existing signals at Harper Road and Wright Avenue. Said installation shall be completed as a condition of the issuance of a Certificate of Occupancy for the Wuesthoff Hospital project by the city. The signal may not be installed unless the signal is warranted as demonstrated by a traffic engineering study to be provided by the applicant. The signal installation must be approved by the county.

If the signal is not warranted, the applicant shall provide a Traffic Corridor Improvement Agreement as defined in the original February 25, 1997 stipulation for site plan approval. Said agreement shall be executed prior to issuance of a Certificate of Occupancy.

Another matter of interest is the cost of the signal installation and credit for road impact fees. There are distinctions to be made in defining which improvements might be eligible. Entrance improvements are not eligible for impact fee credit. As proposed at this time, the subject signal would be considered an entrance improvement since it will serve only the driveway to the hospital. However, the interconnection of signals on Wickham Road would be eligible since that is a roadway system improvement. There are plans to extend Cochran Road (the subject entrance to the hospital) through to Ellis Road. This would provide traffic relief on Wickham Road, particularly at the congested Ellis Road intersection and would more or less serve as a westerly bypass of that area. This could be considered for impact fee credit as well as the subject signal installation (retroactively). Staff will be working with the developer to define an impact fee agreement to cover these future road improvements.

Rich Kolleda, Chief Operating Officer, Wuesthoff, Melbourne, responded to Mrs. Poole's questions regarding the gopher tortoises and trees. He confirmed that their intent is to plant a lot of trees around the building.

Moved by Contreras/E. Palmer for approval of a revised stipulation to allow the progress of the project by permitting approval of construction plans without the traffic agreement. It is understood that in no event will a final Certificate of Occupancy be provided without the signal being installed and operating or the traffic agreement contemplated in the first stipulation being provided. Motion carried unanimously.

22. COUNCIL ACTION RE: Discussion of pay for the City Manager and City Attorney. (Requested by Council 11/13/2001)

Mayor Buckley recommended Council instruct staff to provide salary information from five cities with population above and five cities with population below Melbourne prior to acting

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on this item. Mrs. Poole and Mrs. Hand agreed. Mr. Contreras added that the complexity of issues handled by the cities in the study also be considered (whether they have water and wastewater facilities, number of employees, etc.).

Mayor Buckley commented that over the past two – three years the salaries of city managers and city attorneys have escalated. He said he wants to ensure that we keep our City Manager and City Attorney.

Mrs. Walker agreed and recommended that a step increase be approved while the issue is being investigated. Mayor Buckley said his idea would be to have all the information return on the next agenda. Mr. Hill said it would take a while to pull the report together. Mayor Buckley said regardless, the pay would be retroactive. He suggested the first meeting in January.

Mrs. Poole asked that the budget total of the cities in the study be considered/included.

Mr. Hill pointed out that using five cities with population above Melbourne will result in cities in South Florida being included. This will skew the figures upward since those areas are more urbanized. That might alter how comparable those communities are.

Mrs. Palmer said if the information reveals that we are off base and have low figures, we may want to consider phasing in the increases in order to keep our rates competitive. If adjustments are needed, the sooner the better.

A brief discussion followed regarding step increases. Mayor Buckley said the step increases for the general employees equals approximately 5%. Mr. Hill agreed and said they are between 4 ½% and 5%. Mrs. Walker said that increase needs to be implemented effective October 1.

Moved by Walker/Contreras to provide a 5% increase to the City Manager and City Attorney salaries effective October 1.

Mrs. Poole pointed out that the general employees make a lot less than the City Attorney and City Manager. A 5% increase for the City Manager and City Attorney represents a big jump in pay. She would like to see 2 ½% implemented and then review the issue after the first of the year.

The question was called. Motion carried. Mrs. Poole voted nay.

Mrs. Poole said she voted nay because she is concerned about the budget.

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Palmer referenced the salary of the City Manager. She pointed out that the City Manager works hard to ensure that the city provides salaries for its employees in order to attract and retain the best people and maintain a competitive edge. However, when it comes to his own salary, he is not before Council making that same case. She stressed

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that Council needs to provide a competitive salary and benefits package for the City Manager in the same manner that he considers those issues for all other departments.

Mrs. Hand agreed and said if for some reason the City Manager or City Attorney left, a replacement would not come cheap. Mrs. Poole commented that 125 people applied for the City Manager's position the last time it was vacant.

Mrs. Poole discussed the issue of maintenance of sewer lines on Trailer Haven property. She reported that three Trailer Haven residents have had to pay \$480 repair bills for lines that were blocked. She said staff needs to impress on the airport that they can't keep adding costs to the residents. They are on limited income and it is the airport's responsibility to see that they are taken care of.

Mr. Hill said city staff and airport staff are currently mapping/identifying all the lines. Following that, a meeting will be held to determine if it would be appropriate for the city to take over any additional maintenance.

Mrs. Poole said previously the maintenance/repair costs were not passed on to the residents. That practice has suddenly stopped. The residents are so afraid of retaliation that they do not want their names used.

Mrs. Walker referenced the City Manager and City Attorney evaluations. She said she did not make many comments on her evaluations; however, she talked to Mr. Hill and Mr. Gougelman. She stated that Melbourne is fortunate to have them and as far as she is concerned, they are tops.

24. ADJOURNMENT

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

The meeting adjourned at 10:32 p.m.

City Clerk – 12/5/2001

Approved by Council: _____