

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
DECEMBER 11, 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 Dr. Harvey Riley, Mt. Moriah Baptist 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
	Bud Emerson	Assistant City Manager
	Paul R. Gougelman, III	City Attorney
	Cathy Baker	Assistant City Clerk
	Peggy Braz	Planning and Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented Pat Poole with her 15-year service pin and Vice Mayor Hand presented Mayor Buckley with his 15-year service pin.

Pat Hochstat, Zonta Club of the Melbourne Area, presented the city with three Christmas ornaments depicting landmarks in the area.

5. APPROVAL OF MINUTES - Regular Meeting – November 27, 2001

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

6. CITY MANAGER'S REPORT

No additions/no questions.

7. PUBLIC COMMENTS

John Mutschler, 4565 Grand Meadows Boulevard, expressed support for the Police Chief and questioned the need for an inquiry into his actions (regarding the suicide of Officer Larry Simpson). Mayor Buckley advised that a citizens' board (Police Review Panel) was established to review police procedures.

Mayor Buckley asked for a moment of silence to remember the victims of the September 11 terrorist attacks in New York City and Washington, DC.

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UNFINISHED BUSINESS

8. RESOLUTION NO. 1727: Discussion of policy revisions for distribution of funding to non-profit organizations. (Postponed by Council 10/23/2001)

Mr. Hill reported that Council postponed action on October 23 in order to reflect further on whether certain organizations (AARP, Community Services Council, Honor America, Melbourne Municipal Band, and the Melbourne Community Orchestra) that receive annual funding from the city should be removed from this process and simply placed in the annual budget.

A number of suggestions for revisions to the policy were submitted and have been included in the draft. The proposed resolution also incorporates staff recommended policy revisions to tighten the parameters and better define the restrictions.

The main elements of the proposed policy revisions include: 1) an annual cap of \$100,000 is recommended rather than established; 2) organizations must have been successfully operating for at least two years; 3) organizations should have sufficient private funding support to meet ongoing costs and obligations. Only in an emergency would grant funds be used for normal operations; 4) no single organization may receive funds for more than two consecutive years; 5) no single organization may receive more than \$10,000 per budget year; 6) organizations must not be receiving other city funds; and 7) require explanation about funds received in prior years and what services were provided to city residents in exchange for those funds.

Council agreed that AARP, Community Service Council, Honor Melbourne Municipal Band, Melbourne Community Orchestra, and the Henegar Center would come out of budget and not this request. Members also agreed that the annual cap would be \$60,000 for all other non-profit organizations.

Mr. Palmer stated he does not agree with 4, 5 and 6. These are too restrictive for some organizations. Vice Mayor Hand expressed concern with 4 and 5 and said some organizations may need \$15,000 and should not be limited to \$10,000. She also does not agree with limiting non-profit organizations to no more than two consecutive years. Mrs. Walker agreed.

By consensus Council agreed to cap the funding at \$60,000, delete 4 and 5 and amend 6 to allow non-profit organizations that provide a service to the city at a cost to participate in this process.

Mrs. Poole asked for clarification on 6. Mayor Buckley explained that if an organization is working under a contract with the city it can still request a charitable donation. Mrs. Poole stated she has a problem with that. There are many organizations that need help and a lot of non-profits are receiving CDBG funding. Council should help those that are not receiving other funding.

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Mr. Contreras stated there was some discussion regarding the Henegar Center; however, there was not a full agreement.

Mayor Buckley commented that the Henegar Center is included. Mrs. Palmer asked whether these organizations will be included in the budget in perpetuity. Mayor Buckley commented that can be discussed at budget time. Mrs. Palmer said she is opposed to including the Henegar Center. She commented that it was her understanding that the center had an emergency situation when they experienced a shortfall.

By consensus Council agreed to not include Henegar Center as an organization included individually in the budget. Mrs. Hand objected based on the Henegar Center providing a quality of life. Mrs. Walker agreed the Henegar Center should be included in the budget. Council reversed its decision and by consensus agreed to include Henegar Center as a budgeted organization.

Attorney Gougelman read Resolution No. 1727 by title.

Moved by Walker/E. Palmer for approval of Resolution No. 1727 as revised. Motion carried unanimously.

9. 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) (Representative – David T. Menzel) (Postponed by Council 11/27/2001)

Mr. Gougelman read Ordinance No. 2001-62 by title.

From the agenda report: This item was postponed until additional information could be obtained by the City Attorney regarding the easement for the trysting steps. That information has now been provided and a memo from the City Attorney is included in the agenda package. A copy of the survey results are also included in the agenda package. The survey notes that the steps are slightly outside the original easement. From the information received, the City Attorney has concluded that an easement does exist, only over the steps, either in actuality or through prescriptive rights.

Ms. Braz briefed Council. This is the first reading of an ordinance for a conditional use for a building height of greater than 80 feet and site plan approval for an office/retail building, located 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 (Harbor City Boulevard).

The property is part of the oldest section of Melbourne. The property was originally platted in 1887 as Camp's Plat and re-platted in 1892 as Strawbridge Subdivision, and then the easterly portion was again re-platted in 1947. The former 30-foot wide street was vacated

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in 1907 and platted over in the 1947 re-plat. An easement for a sewer line now splits the property. A site plan was approved in the mid 1980's for the portion of the property containing a drive-in bank. It was approved in conjunction with One Harbor Place building for the Barnett Bank. As a condition of meeting parking requirements for the One Harbor Place building, an easement was granted to the owners of One Harbor Place to provide 13 parking spaces on a portion of the subject site. The validity of this easement is in litigation although the applicant has indicated that he is willing to provide the 13 spaces on his site with an easement in favor of One Harbor Place and the city. The City Attorney has also commented on this parking easement in his memorandum.

The property has an adopted future land use of mixed use Commercial/High Density Residential and is zoned C-3 (Central Business District). The property to the north consists of a professional office. The properties to the west consist of residential structures, an old tire store, and the parking lot for a restaurant (Strawberry Mansion). The properties to the south across from New Haven Avenue are offices and retail uses and a city park. All adjacent properties are zoned C-3.

The Zoning Code requires a conditional use for all development exceeding 80 feet in height in the C-3 zoning district. The building setbacks permitted in the C-3 zone are 0 feet, except that parking garages must setback at least five feet. Article XV of the Zoning Code requires that certain conditions be met in order for a conditional use to be granted including the submission of a site plan complying with the requirements of City Code, Appendix B, Article XX.

Maintaining our history is an important issue and the trysting steps are a part of that history. The applicant is proposing to locate a stairway close to where the steps now exist. He proposes to include a plaque similar to the present one, which depicts the history of the steps. A walkway will go through the garage exiting on the top of the buff with another historic marker. Council will need to consider if it would be effective to have the city's history included in the new building. Our Comprehensive Plan, Future Land Use, states: "5.a. During the development review process, encourage and promote the preservation of historic resources and promote quality architecture compatible with those historical resources...."

The site now contains the abandoned drive-in bank and parking lot, a vacant, vandalized commercial structure and yard areas. A dumpster used by the adjacent restaurant is also located on the westerly portion of the property. Most of the site is in need of maintenance. There are several large trees on the property, many located along the existing bluff line. The applicant's proposed plan of development consists of a seven-story office/retail building. Article XVII permits elevator shafts and other portions of buildings not for occupancy to be exempt from the height standard. Building height is measured from the highest grade or street elevation. Depending on where the grade is measured, this varies greatly due to the area topography. The plan indicates various base grades surrounding the proposed building. Based on our Code the proposed development would need a conditional use to exceed 80' by 13.2'. The highest point on the building is the top of the elevator shaft, which measures 115' from New Haven Avenue and 103' from Strawbridge Avenue.

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Parking for the building will be provided in a garage/surface lot combination, which will consist of the first two floors of the seven-story building. A total of 193 spaces will be provided on site. Access to the garage will be provided to the lower tier of parking from two driveway cuts onto New Haven Avenue and to/from the upper tier from a driveway connection to Strawbridge Avenue and to an alley that connects to Strawbridge Avenue. The site plan provided depicts the layout of the footprint of the proposed building, parking areas, driveways and yard. The gross leaseable area on the remaining five floors will total 50,000 square feet.

The applicant proposes to relocate many of the trees on site including oaks and palms. The easterly portion of the property lies within an aquifer recharge area and within a designated flood hazard area (Flood Zone AE with a base flood elevation of five feet). No leaseable area of the site would be located in a special flood hazard area and with this design, adjacent properties would not be adversely affected since Code required retention will be provided. The Downtown Architectural Review Board approved the conceptual site and building design plans at its October 17, 2001 meeting.

The applicant proposes to vacate a utility easement containing a sewer line and relocate the sewer line to the adjacent rights-of-way.

Presuming the matter of the trysting steps can be addressed to Council's satisfaction, the use will not be detrimental to the welfare and will be in harmony with the general purpose of the zoning ordinance because it will result in a plan that will comply with all Zoning Code required building setbacks, yards, lot coverage requirements, off-street parking requirements, environmental impact assessment requirements and specific site plan standards identified in the Land Development Code. The conditional use request will not be injurious to the neighborhood or otherwise detrimental to the public welfare and will be in harmony with the general purpose of the zoning ordinance. The character and use of adjoining uses and uses permitted in the Downtown area are similar to the proposed use in that offices and buildings of greater than 80 feet in height are now located in the Downtown area. The increase of intensity of the use of the site can be accommodated on the site and area streets can accommodate traffic volumes to be generated by the proposed office/retail use.

The proposed building is to be located within and surrounded by a heavily developed area and the additional building height will not unduly block air or light to adjacent properties, particularly since the actual portion of where the additional height will be located on the property will be at least 54 feet from the adjacent property to the west and 40 feet from adjacent property to the north, and the building will be setback farther from the right-of-way and from adjacent properties than the Code requires. This highly valuable commercial development will replace an unproductive, but potentially viable area of the city with one that will compliment the Downtown area, contribute to the redevelopment effort of the city, improve the aesthetics of the property, and replace an unproductive economic asset. A 50,000 s.f. building with necessary parking could be erected on the site without a conditional use for height, however the architectural

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amenities that enhance this proposed structure, particularly the atrium, require additional height for the necessary usable area.

The Planning and Economic Development Department along with the City Manager and City Attorney recommended postponing this item until a title search was completed and the location of any existing easements for the issue of the trysting steps was determined. However, the Planning and Zoning Board indicated that the stipulations adequately covered the issue and voted unanimously to recommend approval of CU-2001-11 with the findings listed in the agenda package and the following conditions:

- a. The habitable building height shall be limited to 107 feet (measured from proposed building grade at New Haven Avenue) and 93.2 feet (measured from the proposed building grade on Strawbridge.)
- b. The conditional use for height shall be consistent with the site plan for Causeway Center Building consisting of a four-sheet plan prepared by MAI Architects Engineers of Melbourne, Florida, with project number 01-089, dated 9/01/01 and 9/17/01.
- c. Any change to the site plan will require re-evaluation of the site plan by the City Planning and Economic Development and Engineering Departments. Any substantial change shall require the review and approval of the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes but is not limited to: a) a decrease by more than five percent in the amount of open space or vegetative areas on site; b) a change in the location of vehicle access points; c) an increase in the building height above the height approved as part of this conditional use approval; or d) the removal or modification of the trysting steps other than as shown on the site plan.
- d. The conditional use and plan approval are subject to submittal of a title search and opinion with copies of the complete report with referenced attachments provided to the Planning and Economic Development Department and if necessary, vacations of easements or other encumbrances necessary to develop the site.
- e. The use and plan are subject to the abandonment and vacation of a 30-foot wide utility easement bisecting the property and reconstructing the sewer line within adjacent rights-of-way.
- f. Provide assurances or remedies to provide parking necessary to comply with the parking agreement per ORB 2723, Page 2877, Public Records of Brevard County, Florida.
- g. Provide a complete Environmental Impact Assessment report complying with City Code, Appendix D, Chapter 9, Article IV.

Staff believes that any approval of the site plan should not include the walkway crossover until there is a final design for that facility and approval of both the city (including Council, Downtown Architectural Review Board and Downtown Redevelopment Committee) and

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FDOT. It is also believed that it is in the best interest of the Downtown revitalization efforts that the first floor of the Causeway Center development remain as proposed with restaurant and retail space.

Council also needs to determine how it wishes to address the easement for the trysting steps. Council should either require some agreement for use/improvement at the steps/easement, consider vacating the easement, consider relocating the easement or the building should be reconfigured around the easement.

Should Council wish to approve the conditional use for height and the plan that has been presented staff recommends several of the stipulations proposed by the Planning and Zoning Board be modified as follows (new material underlined, deleted material with strike-through):

- c. The site plan for Causeway Center Building consisting of a four sheet plan prepared by MAI Architects Engineers of Melbourne, Florida, with project number 01-089, dated 9/01/01 and 9/17/01 is approved. Any change to the site plan will require re-evaluation of the site plan by the City Planning and Economic Development and Engineering Departments. Any substantial change shall require the review and approval of the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes but is not limited to: a) a decrease by more than 5 percent in the amount of open space or vegetative areas on site; b) a change in the location of vehicle access points; c) an increase in the building height above the height approved as part of this conditional use approval; and d) the removal or modification of the trysting steps other than as shown on the site plan.

- e. Site plan approval is subject to adoption of an ordinance releasing any public rights in the easement for the trysting steps and any adjacent prescriptive rights; or the city and the owner/developer entering into an agreement with the city recognizing the future existence of the trysting steps, the 1892 easement where the trysting steps are located, and any adjacent prescriptive rights. The agreement shall also acknowledge the right of the owner/developer to develop the project as approved by the City Council on the official site, and the agreement shall be in form and substance acceptable to the City Manager and City Attorney. The final draft of the agreement must be approved by the City Council prior to issuance of a building permit for the project. ~~The use and plan approval is subject to submittal of a title search and opinion with copies of the complete report with referenced attachments provided to the Planning and Economic Development Department and if necessary, vacations of easements or other encumbrances necessary to develop the site.~~

- f. Prior to issuance of a building permit for the project, the owner/developer shall either pay \$32,500 in the Downtown Redevelopment Parking Trust Fund or arrange for a parking easement for 13 parking spaces for the exclusive use of One Harbor Place, which easement and parking spaces shall meet all applicable City Code requirements. ~~Provide assurances or remedies to provide parking necessary~~

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~~to comply with the parking agreement per ORB 2723, Page 2877, Public Records of Brevard County, Florida.~~

- h. Approval of the walkway crossover is disapproved without prejudice to submittal of an application upon final design for the office facility and crossover. Approval of the City Council, the Downtown Architectural Review Board and Downtown Redevelopment Committee shall be required.
- i. The first floor of the Causeway Center development shall remain as proposed with a restaurant and retail space.

Mrs. Poole questioned whether this information would be provided to Council. It was noted that the recommended changes are not new and are included in the agenda package. In response to Mrs. Poole, Mr. Hill stated that the highest point of the elevator shaft is 115' on New Haven Avenue and 103' on Strawbridge Avenue. Mrs. Braz commented that the measurements differ from sea level versus grade level. Mr. Menzel commented the highest point is 112'.

Mr. Gougelman commented there are two easements on the property that are of some concern. He believes that the revised condition "f" will resolve the problem with the parking easement for One Harbor Place. He discussed the history of One Harbor Place. To meet Code required parking when that project was approved, One Harbor Place obtained a parking easement for 13 additional spaces from the former owner of the Hynes property. The owner/developer is in litigation with One Harbor Place over the legality of that particular easement. The litigation should be before the court in January for a motion of summary judgment. At that time the issue may or may not be resolved. If Council approves the site plan, the revised condition "f" should resolve the parking easement issue. The applicant would be required to relocate the easement or pay \$2,500 per parking space into the Downtown Parking Trust Fund.

The more interesting easement is the one for the trysting steps. He noted that the city retained Mike Sweeny, Frazier Engineering, to conduct two surveys. The first was of an easement that the city received in 1892 from several owners – including Ginny Strawbridge. Mr. Sweeney was also asked to investigate the easement for the location of the current steps.

Originally the steps were constructed of wood. Around 1938 they were replaced with concrete steps. It is unclear whether the concrete steps were constructed where the wooden steps were or moved to the east or west of the original easement.

Exhibit A2 of the surveyor's report locates the original easement and the current steps. The existing steps are located partially outside of that easement. Another question is whether the 1892 easement is a valid easement in favor of the city and whether the city has squatter's rights with regard to the steps as they now exist. The agenda package includes a memorandum outlining the chain of title provided by a local abstractor. The abstractor researched from the 1890s to reconstruct the chain of title on the easement and easement property. The chain of title he provided is good; however, it posed additional questions.

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Clarification is needed whether Ginny Strawbridge (who signed the easement) owned the land exclusively. There is information that Ginny and Emma Strawbridge owned the land jointly; however, Emma did not sign the easement. This raises questions regarding the validity of easement.

Aside from that is the issue of prescriptive rights. These steps have been at this location for roughly 105 years. There is some thought that there may be some concept of squatter's rights or adverse possession and that the city has a right to claim the steps. For the city to secure that right a written agreement with the owner/developer is needed or a court order deciding adverse possession. He believes the city would be successful with any court action. That is the current status regarding the easements.

He stated that a number of alternatives have been outlined whereby Council could agree to approve the conditional use and make some allowance with regard to the easement. Any rights would have to be waived or released by Council. He noted that the easement could be moved or the owner/developer could build around the easement.

Mr. Palmer asked about the relationship between the Strawbridges (Ginny and Emma). Mr. Gougelman stated that he believes they are sisters; however, the record does not give an indication. It may be that by the time the easement was granted Emma had died and the land belonged solely to Ginny. The abstractor is researching this.

Responding to Mrs. Poole, Mr. Gougelman reported that Commonwealth Land Title Insurance Company, a nationally recognized insurance company, is the abstractor.

Mayor Buckley asked Mr. Gougelman to address the quasi-judicial proceeding.

Mr. Gougelman explained that when Council acts in a judicial capacity (land development issues) such as this item, the action is quasi-judicial. In such instances, Council is not sitting as the voice of people, they are sitting as judges. Council's decision must be made based on the evidence presented at the meeting, not based on the opinions of the people. This may sound unusual, unreasonable and improper; however, this is the law according to the Florida Supreme Court. If Council makes a decision based on something heard outside the open public meeting, that information must be disclosed at the beginning of the public hearing. This allows the applicant to address the validity of the information. The applicant's attorney also has an opportunity to cross examine.

Mayor Buckley stressed that members are not to take a position before they hear the evidence presented at the Council meeting. He called for disclosures.

Mr. Contreras said he spoke with David Menzel and Dr. & Mrs. Hynes on the site today. He also received a package from Bob Gross regarding the trysting steps. He received the various e-mails distributed to Council. He reviewed the rendering and discussed the trysting steps. He noted that no other opinion was formulated.

Mr. Palmer reported he visited the site and the trysting steps. He had a conversation with Dennis Meehan who is in favor of the project.

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Mrs. Poole stated she visited the area to take pictures because she wanted to verify the claim that the trysting steps are overgrown and covered with trash. She traveled the bluff walk to the Wells Estate except in two areas that are fenced. She talked to Dave Menzel and spoke with Johnise Sapundjieff, Bob Brown, Colonel Eugene Lathrop, Richard Wallace, Diane Sheffield, Harry Goode, Todd Smith, Weona Cleveland, Bob Gross, and Cameron Donaldson. Additionally, she received the information from Bob Gross. She commented that she has learned a lot about Melbourne from these people.

Mayor Buckley questioned Pat Poole about her article that appeared in the December 11 Florida Today newspaper. Mrs. Poole replied that the newspaper determined the title, "City Should Reject Causeway Center" on a letter she wrote in response to an editorial about the ugly condition of the area.

Mrs. Hand stated she received a telephone call from Mr. Menzel, but she did not have an opportunity to meet with him. They discussed the project, the trysting steps and the fact that the steps would go through the parking garage. Weona Cleveland asked her opinion of the trysting steps. Ms. Cleveland values their historical value to the community. Mrs. Hand stated that she did not realize the project was coming before Council when she talked to Ms. Cleveland. Dennis Meehan spoke to her in support of the project. She also received the package from Mr. Gross and enjoyed the pictures of the history of the area.

Council Member C. Palmer received the package from Mr. Gross and a phone call from Mr. Menzel; however, she did not meet with him and instead waited for the meeting.

Mrs. Walker received the pictures and history from Mr. Gross. She received a call from Weona Cleveland who expressed that the steps are part of our history. She noted that Mr. Menzel called her; however, she was not able to meet with him.

Mayor Buckley stated he met with Mr. Menzel, Dr. Hynes, and the attorney, Mr. Frese, about two weeks ago. He wanted to find where the trysting steps are located. He was also advised of the proposed location of the steps. Since then he has received the package from Mr. Gross and a call from Peter Bakolia about whether he should appear before Council. In his conversation with Mr. Bakolia, Mr. Bakolia noted that Mrs. Poole had told him she was opposed to the project.

Attorney Gougelman read a letter from Richard and Jackie Wallace, dated December 11, 2001, opposed to the project. They want the historical features of Melbourne's history preserved and note that the area needs housekeeping on a regular basis.

Mrs. Poole commented that she had forgotten that Mr. Bakolia had called her. They have not spoken for months and she was so shocked by the phone call that she forgot about it.

Dave Menzel, MAI Architects, displayed drawings and explained the design. The trysting steps and their location have always been kept in mind during planning. The project itself is a perfect example of what is needed Downtown. He pointed out that they could have constructed a 105,000 s.f. building on the property, stayed within the 80 feet and met all of

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the City Codes. They opted to scale back the project. The project includes two separate buildings connected with an atrium. The conditional use is for the additional 13 feet (over the 80' allowed) to create the barrel vault for the atrium to make it more appealing.

The remainder is the site plan. It meets all City Codes and requirements. He also discussed the parking garages he has successfully developed in Melbourne. Referencing the 13 extra spaces, Mr. Menzel stated the building was designed with those included. As far as the easement issue, if One Harbor Place prevails in court, the spaces will be available to them.

Mr. Menzel stated that he met with property owners in the area to address their concerns before the Planning and Zoning Board meeting. The drainage issue was a main concern. He stated that at the end of Front Street is an inlet box with a small outfall box. All of the water runs down the hill and floods Front Street. He noted that this project proposes to channel the runoff into the DOT right-of-way pond. This should help alleviate the Front Street flooding problem.

Regarding the easement on the trysting steps, they propose a pedestrian walkway on the second level. A five foot easement exists and they propose to make the easement across the open parking deck. The only obstruction of view will be from the landscaping. They plan to preserve the original trees. He noted that they are the third generation to improve the steps. They will meet Code and put them in exactly the same place. They planned to construct the walkway across U. S. 192; however, FDOT won't permit the crossing.

Mr. Menzel noted that six 8" and two 12" trees will remain; however, two trees must be removed. One is on the side of a hill and the other trees is in bad shape. He noted that the front area is being done in conjunction with a landscape grant provided by FDOT.

The arch across New Haven Avenue can serve as the gateway to the city and the entrance to Downtown Melbourne. Dr. Hynes agreed to participate in funding to create a walkway over the arch. This is something that the city had planned to do anyway. It will be done tastefully and will look very nice.

A traffic problem exists at the intersection traveling west on the Melbourne Causeway and turning left onto New Haven Avenue. He noted that a full traffic study has not been completed; however, one will be done. FDOT does not have a problem with New Haven Avenue as they have proposed.

Mr. Menzel stated the most important issue is this property is in a redevelopment area. The project will provide \$40,000+ for the redevelopment area. This is a major investment that will stimulate growth in Downtown. Mr. Menzel noted that the majority of business owners in the area are supportive.

He concluded by stating that Dr. and Mrs. Hynes have done the best they can to preserve the trysting steps. One way or another the steps will need to be changed, they cannot be left as they are. Mr. Menzel stated that they have worked on this for three months. He hopes Council will approve the project.

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Mrs. Poole stated that Mr. Menzel previously told her that only the tree on the side of the bank would be removed. Mr. Menzel stated that the other tree is a poor specimen; however, if Council feels the tree should stay they will leave it. Mrs. Poole stated it is important to her because Mr. Menzel told her that all the trees on the bluff would be left.

Mr. Menzel commented that there are two trees that hug the trysting steps. They both lean to the south. Those big trees will remain. All the other trees will be relocated or left where they are. He noted that there is a cluster of palm trees to be relocated 15' to the east in the landscaped area for FDOT.

Mrs. Poole stated that the original easement indicated that all the trees at the top of the bluff on the east side would remain. She asked if they are leaving all the trees. Mrs. Poole stated the plans include removing the wall that holds up the bluff walk. The wall was a stipulation when the drive-in bank was put in because they were afraid the bluff walk would collapse.

Mr. Menzel confirmed that there will be a retaining wall built on the north side of the steps to secure the oak tree that exists on the east side of the existing steps.

Mrs. Poole stated these are historical steps and asked if Mr. Menzel felt all non-conforming steps should be removed. Mr. Menzel stated if these steps were located anywhere else they would have to be replaced.

Following a brief discussion, Mayor Buckley asked that the discussion not be argumentative.

Responding to Mrs. Poole, Mr. Menzel confirmed that the parking spaces are 10 feet wide. He stated that parking garages are allowed 10 foot parking spaces if there is a gate. During open hours there will be an attendant present. They can put up a gate if one is required. He stated they will endeavor to make this work.

Mrs. Poole asked if the plan is to move the trysting steps. Mr. Menzel stated that the existing steps will fall apart if an attempt is made to improve the handrails. They can't remain as they are because they won't align with the building. They will construct a set of steps to commemorate the original steps. The steps don't have to be curved, but they thought it was a nice element. Mr. Menzel stated that the steps can be kept exactly where they are if his client agrees.

Mrs. Poole asked about the plans for the bluff walk. Mr. Menzel stated it would extend through the parking deck and noted that a handicapped person could enjoy the bluff walk. Mrs. Poole countered that the building is seven stories high and asked how the river can be enjoyed. Mr. Menzel responded that the river can be seen from the parking deck and the building.

Mr. Contreras asked if the atrium and elevator shafts are available to the public after hours and on weekends. Mr. Menzel stated the city can be given the ability to use the parking deck. He also stated that the roof will have an observation deck. All of the mechanical

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equipment will be located on the lower level of the east side away from the open area.

Mrs. Palmer discussed the options available regarding the trysting steps and asked if the applicant had considered any of the options and how the project would work. Mr. Menzel stated they have not considered building around the steps; however, it is an option that could be utilized. The steps are old and cracked and the handrail seems stable, but it is an old metal handrail. He stated preserving the steps is doable, but it may not be practical because it would be difficult and expensive. Moving the easement to the east would not be a problem if Dr. Hynes agreed. That could be done by creating a walkway around the project. He stated that the easement across the property does not go anywhere. The current easement carries through and ends at the hedge on the south portion of the Vitale-Lewis property (Strawbridge Avenue). They propose to create a flat concrete walkway.

Mrs. Hand asked if the trysting steps go through the parking lot. Mr. Menzel responded that the trysting walkway goes through the parking garage. He explained the trysting walkway. The proposed walkway continues across Strawbridge Avenue. He noted that the bluff walk on the north side of Strawbridge Avenue is gone.

Mrs. Walker stated this is a medical building. Mr. Menzel replied it is called that because the owner is a doctor. It is a mixed use. There is a surgery center, orthoscopic area, an internal restaurant and retail sales (mechanical devices, braces, orthopedic, etc.). He noted that the restaurant is cafeteria-like for the workers.

Mrs. Walker asked whether the project could be done without extending the height. Mr. Menzel responded that the building could be built at 80 feet. The only reason the additional 13 feet is needed is for the architectural feature. It creates a dramatic feature on top of the atrium. The barrel vault is not an occupied space.

Mr. Gougelman questioned Mr. Menzel's comment about an arrangement for the parking garage to be open to the public. Mr. Menzel stated they would be agreeable to making this some type of condition of approval.

Recessed: 9:17 p.m.

Reconvened: 9:28 p.m.

Gary Frese, Hynes Property LLC, commented this project is not at the building permit process yet. This is site plan approval and there are always issues with site plans. There are three main issues; the parking easement, the trysting steps easement, and the sewer line easement. There is no question with the sewer line easement; it is definitive. He noted that there are enough spaces to satisfy the parking space easement if it is required. Council has an opinion from the City Attorney regarding the trysting steps easement; however, he asked Council to keep in mind it is an opinion.

Mr. Frese stated that each of these items can be a stipulation of approval. He stated that stipulations in site plans are ordinary and expected. They can continue to work with staff to resolve the problems to the satisfaction of the city. Mr. Frese pointed out that the Planning and Zoning Board, staff, and the Downtown Architectural Review Board have given

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approval for the project.

Continuing, Mr. Frese stated that a lot of people are needed to make a Downtown successful and this project will do that.

Mr. Frese noted that the building is on a hill and the measurements differ. Staff has said that surrounding buildings are higher. The only part of the project higher than 80' is the arch for the atrium. If this is not acceptable to Council that element of the architectural feature can be deleted.

Mr. Frese commented that the trysting steps are not functional and don't connect to anything else. Their only value is the historical significance. The trysting steps easement references a walkway along riverfront lands. The trysting steps did run along the riverbank; however, in 1940 quite a bit of land was filled in. The steps do not serve the purpose that they were originally built for in 1892. He noted that the prescriptive rights are there for the steps and steps only.

The city has done nothing to the steps for 60 years. They are out of Code. He stated that the only real possible regular users are the vagrants and kids wanting to have a beer without being discovered. There are beer bottles all over the top of the bluff.

Continuing, Mr. Frese stated that Dr. and Mrs. Hynes own the property. They care about Melbourne and want to preserve the historical value of the steps. All of these issues probably can't be resolved tonight; however, Dr. and Mrs. Hynes and city staff can work this out. Approval of the site plan guarantees one thing – that Dr. and Mrs. Hynes can continue their planning. They cannot do anything until a building permit is issued. He asked Council not to waste thousands of dollars in staff and the Hynes' time by denying the request. He commented that everyone had forgotten about the trysting steps until Mr. Gross wrote his letter. Mr. Frese referenced the 1988 correspondence from Bill Potter that states that the easement is invalid.

Referencing the stipulations, Mr. Frese stated he has concerns with stipulation "f" regarding the parking space easement. He requested that language be added that states "unless the easement is otherwise terminated by court order or agreement by the parties." He does not want to be bound to contribute to the city parking fund if the easement is not there.

Mr. Palmer stated he has no problem with the stipulations as discussed; however, he has concerns about the size of the restaurant and the number of parking spaces provided for the restaurant. Mr. Menzel advised that the 9,600 s.f. first floor is elevated above the parking deck and contains a 4,800 s.f. restaurant and 4,800 s.f. retail area.

Mr. Contreras referenced the 13 parking spaces under litigation (One Harbor Place). Mr. Menzel stated the project, as designed, contains those 13 parking spaces; however, the litigation is decided, there are enough spaces to give those to One Harbor Place.

Mr. Contreras asked if One Harbor Place is amenable. Mr. Frese commented that the litigation is being handled by the title company.

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Mr. Contreras asked in terms of the ability to provide a service to the citizens of Melbourne, if it is Mr. Frese's opinion that the trysting steps no longer provide a service. Mr. Frese stated that Dr. Hynes is in a tough situation. The stairs don't meet Code and they are on his land. An injured person could sue Dr. Hynes. If they preserve the existing steps it would be for historical value only; they would stop the usage.

Responding to Mr. Contreras, Mr. Menzel stated that the curved steps were added as an architectural feature; there are other accesses to the building. This was an attempt to preserve the history and the area where the steps are.

Mrs. Poole stated the city has been taking care of the trysting steps for 20 years. She added that currently you can walk along the bluff walk and see the river. That won't be possible if the building is constructed. She asked if the bluff walk will be bulldozed in some areas. Mr. Frese replied yes.

Discussion followed regarding comments that the trysting steps would be "no problem". Mr. Frese stated that this perception was given in statements by Bill McCord and Peggy Braz. That is what staff believed at the time.

Mr. Gougelman read stipulations "a" through "i" as revised by the City Manager and asked if the applicant concurs.

Mr. Frese agreed with the following exceptions: he asked that the applicant be allowed to work with staff regarding item d. in stipulation "c" regarding removal or modification of the trysting steps other than as shown on the site plan. He asked that the easement regarding parking spaces for One Harbor Space (stipulation "f") be revised to include "unless the easement is terminated by court order or agreement by the parties to the pending litigation."

Mr. Frese stated that those 13 spaces or a contribution to the parking redevelopment trust fund were part of the stipulation for One Harbor Place. The parking space easement was provided to allow One Harbor Place to obtain their building permit. Mr. Gougelman advised that his request will be submitted to Council for consideration.

Mr. Hill commented that the indication that city staff stated that there would be no problems with the trysting steps might not be totally accurate.

Mr. Contreras commented that the city supports economic development. As prospective businesses come in and work with staff, staff has not shown a blind eye and deaf ear. In support of Mr. McCord and Mrs. Braz, the city's position of supporting economic development is at the direction of Council. He takes exception that city staff said "no problem."

Mr. Hill commented that he did not participate in the conversations. Staff is knowledgeable and concerned about the historical aspects of the city. In the past there has been considerable discussion of the trysting steps before the Downtown Redevelopment Committee. They indicated they did not wish to use Downtown funds to improve or expand

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the steps. The use of redevelopment funds to improve the steps has been before Council and in every instance Council has decided not to improve the steps.

Mr. Frese commented that he did not mean to say that staff intentionally misled them, were careless or not knowledgeable. He is telling Council that the issue is so uncertain that Mr. Gougelman was asked to give an opinion as to whether the easement existed.

Mrs. Poole commented that neither Mr. Contreras nor Mr. Frese were present during staff's discussion with the applicant. She wants to hear from Mrs. Braz.

Mr. Contreras asked who is liable for potential injuries if it is Council's decision to leave the steps as they exist on Dr. Hynes property. Mr. Frese advised that both Dr. Hynes and the city would be liable if the steps are still owned by the city (the public). The solution would be to make them not usable. They can be preserved but blocked so they can't be used. There would be some type of monument or memorial.

Discussion followed regarding the disappearance and reappearance of the historical marker for the trysting steps.

Dr. Richard Hynes stated this property is in a C-3 zone. It is a large, high density project. He stated if the trysting steps had been addressed 20 years ago no one would be here this evening; however, the steps were forgotten. Dr. Hynes stated he did not create this conflict.

Dr. Hynes confirmed that city staff did not "blow off" the trying steps. He asked Council to consider the merits of the project. They have been working with staff for two years. The building has gone from 100,000 s.f. to 50,000 s.f. He reported that if the stairs are preserved as they are, the value of this property is gone. He is willing to compromise.

Dr. Hynes stated he would not recommend walking the trysting steps on a moonlit night because it is not a safe place. He has escorted people off his property and he is concerned with his liability. Dr. Hynes stated he has clear title. He doesn't want to make this an issue; however, he believes that the steps are his.

In closing, Dr. Hynes stated that he does not believe that the Planning & Zoning Board acted inappropriately. Dr. Hynes read from a letter addressed to Council Member Cheryl Palmer from Dorothy Gontz, one of his elderly patients. Ms. Gontz favors progress and questioned tax payer money being spent on steps that lead no where. Taxes on this new building should be an incentive to move forward with project.

Dr. Hynes stated he has spent thousands of dollars and would like, with a cooperative spirit, to move the project forward with the conditions read by Attorney Gougelman. He stated the history of the steps can be preserved; however, they do not have a function.

Mrs. Poole asked if Dr. Hynes would consider building this project in another area along the river. She noted that there are other areas on U. S. 1 where the taller buildings have been placed. She stated that the plans are great; she has no problem with them except for the location.

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Dr. Hynes commented that if he moves because of the easement for the trysting steps, then the entire value of the property is gone. A new property owner would face the same problem. He noted that he has spent close to \$1 million.

Responding to Council Member Walker, Dr. Hynes stated he has been in Melbourne for 10 years and he has owned this property for over two years. Mrs. Walker stated Dr. Hynes purchased the property in 2000 with the understanding that if he could not build the building he wanted he would not consummate the deal.

Dr. Hynes confirmed that he had said he would not buy it with easements on the property. There was some knowledge about the parking easement; however, the title company said there was no easement for the trysting steps.

Mrs. Hand asked if it would hinder Dr. Hynes if the project were postponed until there was a court ruling regarding parking spaces. She has a problem with taking the spaces from One Harbor Place.

Dr. Hynes stated the solution is in the proposal; the 13 spaces are designed in the project if it is determined that One Harbor Place has a right to the easement. If the court agrees that they don't have the easement, One Harbor Place should pay the \$32,000 into the parking fund. Dr. Hynes stated that he would like to proceed as they continue to work out the issues. If the idea is that no building should be built at this location, then someone needs to answer why they property is zoned C-3.

Dr. Hynes commented that the suggestion of moving the steps to the east side of the parking garage is an option.

Mr. Contreras asked how soon Dr. Hynes could start, contingent on approval and issuance of a building permit. Dr. Hynes responded it depends on how quickly the building permit is issued and trysting steps issue solved. It would take approximately four months to develop the plans and submit them and then another nine months to a year or year and one-half for construction.

Mrs. Braz stated development of plans on this property has happened over the last several years. There was discussion with the Downtown Redevelopment Committee (DRC) regarding the trysting steps and whether the committee felt it would be reasonable to maintain the history. She noted that staff and the committee have always supported maintaining the history with some type of marker and steps. The DRC decided if the city had an interest in the trysting steps – it should be sold. However, it is an easement and can't be sold. When Dr. Hynes came in for formal review his survey did not show any easement for the trysting steps.

Mrs. Braz confirmed that staff did not say there was a six foot easement that needed to be protected. She noted that in 1988 when the DRC discussed reinstating the bluff walk, they found that the easement was not realistic to develop – it was shown on some properties but not on others. It was the decision of the DRC not to pursue the bluff walk. There is one

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easement for both the bluff walk and the trysting steps. The steps are there, are part of our history and should be preserved. How that is done needs to be determined.

Paul Fusillo, 2260 S. Front Street, asked Council to take into consideration the tax money (the project will generate). It is currently an eyesore. Mr. Fusillo provided a map showing a proposed project south of this project (near the Chart House). He noted that a traffic problem already exists in this area. The city needs to investigate all of the proposed projects to see if a greater traffic problem will be created. Mr. Fusillo commented that his main concern is the substantial flooding problem. Water backs up almost to the bend in Front Street near the Chart House. There are times during hard rains that Windward Passage residents must park their cars at the Front Street parking lot because they can't drive to their home. Mr. Fusillo asked that the city look at all of these issues and determine the flooding problems.

Bob Brown, 225 Myles Drive, discussed his background and noted that he served on the DRC, serving as chairman from October 1982 – September 1987. Mr. Brown stated his property abuts the Hynes property. He is concerned about what is being constructed and is even more concerned that he had no idea that a plan was submitted. He is a proponent of a project for the site, but not one of this magnitude. He requested that the applicant come back with something more in tune with Downtown and the bluff walk. Mr. Brown stated that what is proposed is a "box being constructed in a rudimentary fashion for maximum square footage." He noted there is no rendering of the north side or the east and west exposure. The applicant has not taken into consideration detailing the beautiful piece of property he has taken over and the responsibility for putting something magnificent on the site.

Mrs. Palmer asked Mr. Brown if he was aware the property was zoned C-3 and if he understood that this type of project was permitted in C-3 zoning. Mr. Brown stated he is aware that all of the area is zoned C-3. He has no problem with the C-3 zoning. He would like to have something sensible constructed. He stated the parking alone is ridiculous. The project calls for a 5,000 s.f. restaurant with only 20 parking spaces. There is something amiss here – the parking is not adequate. The proposed walkway across New Haven Avenue is for the doctor's people to utilize the Front Street parking lot. Melbourne doesn't need any kind of pedestrian walkway that will aid a developer to access more parking.

A brief discussion followed between Mrs. Palmer and Mr. Brown.

Mr. Contreras asked Mr. Brown if he was aware that the property had been zoned C-3 for a number of years, that the total number of parking spaces proposed is 193, that the potential for a multi-story structure being built existed for many years, and that he previously did nothing about it. Mr. Brown responded yes to all of the questions.

Judy Rotstein, owner, Bethel Marine, 1225 E. New Haven Avenue, reported she has no problem with the use; however, there are problems with the building. She questioned some of the details of the project and noted her concern with 10' parking spaces. She added that she was not aware the property was zoned C-3; it is an historical area and she thought it was zoned properly.

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David Larkin, corporate representative for One Harbor Place, referenced the applicant's contract to purchase the property which stated he would not buy the property if easements existed. For him to plead "poor me" and say he can't build his building is a disingenuous statement. Dr. Hynes has title insurance. This is not a C-3 zoning issue.

Mr. Larkin continued. The issue is two recorded easements that exist on this property. He pointed out that he knows two developers who were aware that the easements existed. One of those easements is with One Harbor Place. When the property was sold in 2000 the applicant had the previous owner terminate the easement; however, it is invalid because he didn't maintain dominant rights. If the court determines the easement is not valid it becomes One Harbor Place's problem – and it could put them out of business because they won't be able to obtain an occupational license. He stated this is not the city's problem; however, the parking easement issue has not been resolved.

Mr. Larkin stated Council needs to consider the C-3 zoning, however, that does not mean the applicant can build anything he wants. Council is here to protect the public interest. His client doesn't object to the construction of a building, he objects to this building.

Mr. Larkin discussed the technical issues of the plans. He believes the site plan was approved by city staff as a fictitious entity, a surgical center. The next similar use is a medical office. Staff allowed reduced parking. He suggested that 242 parking spaces are needed, not the 193 required by staff. Mr. Larkin stated that staff should be required to enforce the required parking closest to the use.

Continuing, Mr. Larkin stated the applicant has represented that the building will be open to the public at all times. The plan doesn't include that some of the spaces are encumbered by poles. If 10' parking spaces are used, an additional 20' of landscaping is required. His client's objections are the size of the parking spaces, the size of the building, and traffic problems. These plans should be returned to staff for recalculation of parking spaces and the building size.

Mr. Larkin questioned whether the 1940 replatting of this lot shows the trysting steps. Mr. Gougelman responded no.

Luke Miorelli, 7607 Coral Drive, West Melbourne, referenced Appendix D, 9.73 regarding parking spaces and discussed at length the calculations for determining the number and size of parking spaces. He also discussed traffic problems in the area and added that the project will create visual problems that will heighten the traffic problems.

Bob Gross, 1814 Bryan Street, reported he represents the Brevard County Historical Commission and over 300 people who signed a petition requesting that the steps be saved. One of the main issues with the project is that the trysting steps were there before the dedication (easement) was made and they are an integral part of that easement. The Strawbridge family knew they were there when they made the easement. He noted there were three Strawbridge sisters, Emma, Ginnie, and Naomi. He discussed his knowledge of the Strawbridge family. The proposed historical marker is nothing but a plaque on a garage wall. The historic value needs to be preserved. He stated it was never platted or mapped

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out because for 109 years there was never a question of ownership.

Mr. Gross continued. As far as the steps meeting Code, the Statute of Liberty does not meet Code. Waivers can be made. If Dr. Hynes is worried about liability he can deed the property to the city. He encouraged Council to read the report he submitted.

Mrs. Palmer asked what Mr. Gross thought about the option of preserving the steps as they are and not allowing public use. Mr. Gross responded that is not an option as far as he is concerned. His option would be to leave the steps as they are and maintain them. They are solid steps, the concrete was laid in 1938. For historic preservation of the steps they must stay where they are. He believes they qualify to be on the state and national register of historic sites. There is no other town in Florida that has something like this.

Peter Bakolia, 716 E. New Haven Avenue, encouraged Council to approve the project. It will create additional jobs and a financial stability for other people to create development. He noted that he spoke with Pat Poole and attempted to contact all Council Members to find out their thoughts. Mr. Bakolia concluded by stating this is a good project that will be good for the City of Melbourne.

Dennis Meehan, 1310 E. Prospect Avenue, representing the DRC and himself as a descendant of two pioneer families, stated that when the DRC was formed in 1979 they hired a consultant who identified things that needed to be done. The trysting steps have been in the original plans since 1979. In the past 20 years, no one has come forward with an opinion on what to do about the steps. We have always taken for granted that they are there. He did some research because of the concern with how long they have been there and provided two old pictures showing different configurations of the trysting steps. As far as a pioneer family descendant – he doesn't have a tie to the steps and he doesn't think Council should either. Dr. Hynes should work with plans that place a marker/monument where the steps were. The DRC was excited about this plan because they felt it would add to the Downtown area. Mr. Meehan believes the project should be approved with the stipulations that have been presented.

Discussion followed regarding the petition to save the steps being in Mr. Meehan's store. He noted that he had the petition removed when he found out it was in his store because he does not agree with petitions of any type.

Jack Ryals, 843 E. New Haven Avenue, reported that he serves on the DRC. The Downtown area is an economically viable and thriving area, mainly because Council supports the Downtown area. The DRC was excited when they reviewed this project because it is a substantial development at one of the two entrances into the Downtown area. As a Downtown merchant and DRC member he encouraged Council to support the project. The current trysting steps do not resemble how they looked years ago, they are not functional. This project would improve those steps.

Mrs. Poole asked Mr. Ryals' opinion of historic preservation. Mr. Ryals stated (historic sites) should be something that people visit and enjoy and his personal experience is that the trysting steps are not currently being visited.

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Dr. Paul LaRochelle, 616 Hawksbill Isle Drive, Satellite Beach, noted that he was formerly part of the Brevard Orthopedic Clinic and was associated with Dr. Hynes; however, at this time he has no financial interest with Dr. Hynes. Dr. LaRochelle stated he lived in the Melbourne Harbor Marina area from 1990 – 1995.

Dr. LaRochelle said he finds it grossly inappropriate for a member of the Melbourne City Council to show bias by editorializing in the Florida Today prior to the quasi-judicial hearing. He reported that he walked the steps last week – the first time he knew the steps were there. He described the steps and rails not being up to Code and the deteriorated area.

Continuing, Dr. LaRochelle asked where the supporters of the trysting steps have been for the past 60 years while the area fell into disrepair and why is it now being promoted or protected by the city. The land and the property have been for sale for a number of years. The City of Melbourne is lucky to have a businessman like Dr. Hynes here to work with the city to improve the area.

Discussion followed between Mrs. Palmer and Dr. LaRochelle about the number of parking spaces required by an orthopedic center. Dr. LaRochelle stated there are different codes and regulations; different types of doctors have different practices. Dr. Hynes deals with spines only and doesn't see a great number of patients per day. 22 patients per day is not unrealistic. Most of his patients need extensive diagnosis. Most of his time is spent performing surgery.

Mrs. Walker questioned Dr. LaRochelle's association with Dr. Hynes. Dr. LaRochelle confirmed that he previously worked with Dr. Hynes. However, he stopped approximately two and one-half years ago because of an injury. He came to the meeting because he believes this is a good project for Downtown redevelopment.

Dan LoPresti, 1002 New Haven Avenue (Christmas Cottage), spoke in support of the project. It is something Melbourne needs because of the economic value. He noted that the steps are hindering a good project for Downtown. Mr. LoPresti pointed out that Downtown has always had a parking problem.

Deborah Foreman, business owner at 833 E. New Haven Avenue, stated there has been a big change in Downtown since she's been there. She supports Dr. Hynes' project; it will benefit Downtown, the business district and the atmosphere of the town. Dr. Hynes has the integrity to work out the historical issues. She encouraged Council to approve the project.

Harry Goode, 101 E. Melbourne Avenue, reported he owns the property across from Dr. Hynes' project. He discussed the Front Street drainage problems and noted that he keeps sandbags in his building and uses them monthly during the rainy season. His grade is 18" above sea level. The drainage problem has gotten progressively worse. He stated that FDOT takes the water from half a block on either side of New Haven Avenue and funnels it. Dr. Hynes' architects have assured him that the drainage problem will be addressed.

Regarding the trysting steps, Mr. Goode stated he looks at them everyday. He noted that

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he was born the year the concrete steps were installed. The city and its residents have been remiss because nothing was done with the steps. He would like the steps to remain; however, Council needs to make that final decision. The city has an abandon and vacate process that could be used.

Mr. Goode shared concerns about the parking. A 4,800 s.f. restaurant could hold 200 seats; however, the stipulation limits them to 60. He agreed with the One Harbor Place representative that the parking spaces for this project are not adequately addressed in the site plan presented.

Responding to Mrs. Palmer, Mr. Goode stated he is in favor of the project as long as the drainage, parking space, and trysting steps issues are worked out to Council's satisfaction. He reminded everyone that the applicant could construct an 80' building without Council approval.

Mrs. Poole asked Mr. Goode if he thought it was okay to build a high-rise building there. Mr. Goode responded an 80' building can be built without approval from anyone. He is okay with the project if the step issue can be worked out. He signed Mr. Gross's petition because he does not support the project as originally proposed.

Mr. Frese rebutted and commented on the following: There was opposition at the Planning and Zoning Board meeting; Dr. Hynes averages about eight patients per day; the columns in the parking deck are every 30 feet (noting there are other parking garages that use the same code to allow those columns); the City Code allows the Planning and Zoning Administrator to make the determination of the surgical center designation; landscaping is not required in a parking garage; no more than 60 seats can be placed in the restaurant based on the stipulation; the trysting steps are not on any historic register; the plan will improve the drainage problems; the impact fees could be used to help the drainage situation; and they would have applied for a vacation of the easement had they known it was going to be a problem.

Mr. Contreras commented on Mr. Larkin's statement that the surgical center is a fictitious category, stating that in accordance with City Code, the Planning and Zoning Administrator can determine the number of parking spaces.

Mrs. Braz responded that the Code provides some discretion for both the City Engineer and the Planning and Zoning Administrator to make this determination. A surgical center was identified about seven years ago. Staff determined the traffic generation for various medical centers, trying to be flexible and at the same time understanding that office use could change. Surgical centers generate different numbers of trips than general office use. An entire analysis was done and a ratio was established.

Discussion followed regarding the restaurant being a cafeteria. Mrs. Braz stated that the Code requires one parking space for every three seats. The applicant provided 20 parking spaces and the restaurant is limited to 60 seats. If they want to convert the space to a larger restaurant or provide more retail; additional parking would be required. Additionally, if the surgical center is changed to a general medical office area they more parking would be

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required.

Mrs. Poole suggested checking with the hospital cardiolabs with surgical centers to determine the number of parking spaces required. Mrs. Braz responded that hospital parking is totally different. Staff reviewed surgical centers here and in other communities when Regency came in several years ago.

Mrs. Walker asked if orthopedic procedures will be performed at this facility. Mr. Frese stated that Dr. Hynes' spine center is very different, very unique. He is out of the building three days a week. Ambulatory surgery/spinal surgery will be performed at the center. The facility is 25,000 s.f. and requires 88 parking spaces.

Mr. Gougelman stated the exhibits presented should be included in the record. 20 pages of signed petitions presented by Bob Gross; letter from Fallace and Larkin dated December 7, 2001; two page exhibit (map and statements regarding Front Street) provided by Paul Fusillo; letter from Richard and Jackie Wallace; two page photo exemplar of someone who shot a bear near Melbourne; and the Council package presented this evening including the December 4 City Attorney memo; the official site plan submitted for Council's consideration; survey report prepared by Frazier; and the City Code Zoning and Comprehensive Plan.

Mr. Buckley read into the record four letters received in favor of keeping the steps from Patricia Tidwell Hill, Frances Snow, Colonel and Mrs. Eugene Lathrop, and Glen A. Kirchman.

Mr. Contreras asked about the proximity of the proposed One Harbor Place parking spaces to the original parking easement. Mr. Larkin responded that he does not think they are in the same place. No agreement has been reached with his client. He does not want anything built until the parking easement issue is resolved.

Mr. Contreras asked if the appropriate ingress/egress would satisfy his client. Mrs. Braz stated that no parking spaces are specifically designated. Mr. Menzel stated the project contains 13 more spaces than needed.

There was a brief discussion regarding width of the parking spaces and what is allowed by Code. Mrs. Braz stated that the Code allows 10' parking spaces with a control gate that slows traffic.

Mr. Larkin stated that the original parking easement provides specific exclusive rights to 13 spaces. It provides access to them and a driveway must be maintained. It cannot be altered without permission. They are proposing 13 spaces through two parking decks.

Due to the hour, Mayor Buckley requested that Council finish this item, take action on the second reading ordinances, and Items 16 and 19.

Moved by Buckley/Contreras for approval of Ordinance No. 2001-62 which includes the conditional use and site plan subject to the stipulations as revised by the City Manager.

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Mrs. Poole read a prepared statement listing her objections to the project. She concluded by stating that “the project would be injurious to the neighborhood and could not possibly promote the health, safety and welfare or the quality of life by impacting and destroying one of the oldest and most historic areas, the trysting steps and bluff walk, where our town began.”

Mayor Buckley stated the building is being constructed on property that is now occupied by a vacant tire store, an empty bank building and other vacant buildings. We are trying to encourage redevelopment in this area and he believes this would be an improvement. The area is zoned C-3 zoning, which is the appropriate zoning for this building. He noted that the domed roof adds to the project. Mayor Buckley stated if the trysting steps still looked like they used to, he might feel otherwise.

Mrs. Walker stated she can’t support the project. We need to consider some of the things we have heard. She considers Bob Brown to be an expert. She could support a more attractive, smaller building that was not over 80’. The building should be attractive from all sides; this is just a couple of boxes with an attractive top. She also stated that parking is a problem. During the negotiations to purchase the property, Dr. Hynes told her that he would not consummate the deal if there were easements on the property.

Mr. Contreras stated the issue is functional utility versus historic preservation. This is the entrance into the City of Melbourne. Currently there are several abandoned buildings on the property. He believes this project would certainly aid, abet and act as a gateway to the city. The plan contains historical preservation of the steps and if the parking deck is open to the public, the city has gained 193 parking spaces for the Downtown area. He agreed that flooding is a problem; however, it has always been a problem. With this structure and the proposed redirection of the water some other folks will benefit and can put away the sandbags. Hopefully people will walk across U.S. 1 and see there is more to Downtown.

Mr. Palmer has no problem with the stipulations that have been issued. He believes that the building would improve the appearance of the Downtown area. Driving over the causeway it would be beneficial to the Downtown area to look at a new building; however, he does have concerns. He does not believe the parking has been investigated enough to ensure there is adequate parking. He is also concerned that the project exceeds 80 feet. He stated C-3 zoning allows for a building height of 80’ and that is to be expected. He wants to know if the stipulations adequately address the easement issues.

Mr. Gougelman stated that one of the points as part of the adoption of this motion is giving staff direction on how to resolve proposed stipulation “d.” This is a very flexible condition of approval and there are several ways the issue can be resolved. The entire easement can be vacated or the easement could be moved to the side of the site. Obviously, the final resolution will have to be approved by Council so that staff can work with the owner/developer in the interim to come up with appropriate documentation.

Mayor Buckley stated his motion vacates the original easement; replacing the concrete steps with those proposed in the drawing.

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Mr. Palmer stated before any vote is taken Council should decide what to do about the trysting steps. The parking issue may have been resolved; however, he has doubts. The other thing is the litigation of the easement for the 13 parking spaces. There are unanswered questions. He questioned whether Council approval of this site plan tonight will tie our hands to ensure the trysting steps are taken care of properly and the parking issues are resolved.

Mr. Gougelman stated that Council is not giving final approval to anything tonight. Staff will have until the first meeting in January to meet with the applicant and work out the issues. It is imperative that staff knows how Council wants to deal with the trysting steps. With regard to the parking issue, it has been addressed administratively by Peggy Braz. Parking for the restaurant is determined by seating, not by the size of the restaurant. They will be issued an occupational license for 60 seats only. It becomes a Code Enforcement matter if they violate their occupational license.

Mr. Palmer stated Council should stipulate that when the Code requires a certain number of parking spaces, there should not be any options for staff to modify and reduce that number. This is wrong for the city and we seem to be doing that quite often lately. If the use is not listed in the Code, staff should be directed to use the next closest use.

Mr. Gougelman stated that as a way to handle the parking easement, stipulation "f" does not care what decision the court makes. When Council approved One Harbor Place, an additional 13 parking spaces were required. Based on stipulation "f", the Hynes property will be required to do one of two things – set aside those 13 parking spaces that satisfies City Code or pay \$32,000 into the Downtown Parking Trust Fund (understanding that the applicant's representative did not like the wording in this stipulation).

There was discussion about Council's approval of the original One Harbor Place project. Mr. Gougelman stated that the acceptance of the easement agreement may not have been the best solution. However, now we have to make a situation that is not working quite right work as best we can. Currently under City Code, One Harbor Place would be required to have those 13 parking spaces to meet conditions or pay \$2,500 per parking space into the Downtown Parking Trust Fund. If that is not the way Council wants to proceed in these instances, Council should direct staff to make changes to the Code.

Mr. Gougelman stated the city is not punishing One Harbor Place; they don't want the city to hold them to the Code required parking spaces.

Mr. Palmer stated this is a good project that would be beneficial to Downtown redevelopment and would be good for the entire city. However, there are unanswered questions that cause him some concern relative to the parking easements.

Mr. Hill stated that he does not know how to address the fact that the previous 13 spaces were 11' and will be replaced with 10' spaces. In terms of stipulation "d" he asked that Council give some direction as to how Council would like the issue worked out and staff will return with something for Council consideration. The issue is contingent on further Council

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action and we can't get to those actions until we deal with this item.

Mrs. Hand said she has concerns. She would like to see the steps preserved. It is not fair to Dr. Hynes that all this "garbage" has presented itself. She stated Council has had a lot of things thrown at them at 12:40 a.m. Mrs. Hand stated that it is her understanding that the restaurant was for staff members. She does not object to the building height. Releasing any public rights and adjacent prescriptive rights is difficult. The project would be beneficial to Downtown and an asset to the community; however, these problems need to be worked out. She questioned whether the item should be postponed until city staff and Dr. Hynes can work this out.

Mrs. Palmer stated we need to preserve every historical building in Brevard County that we possibly can. But in the case of the trysting steps, somewhere along the line someone split up the bluff walk. The steps were left in a small area that has become a haven for vagrants. She discussed safety of the area at night. She noted this particular area already has a high-rise building. It behooves us to make that site have the best high-rise possible, not just a big flat box that no one can see through. Mrs. Palmer likes the idea of the atrium and if the existing trysting steps can't be preserved; the trees can be preserved and a historical marker can be placed. Public access can be allowed through the parking garage to the view of the river. She appreciates the heritage; however, she thinks that was destroyed some time ago. She also appreciates the historical information recently provided to Council. She stated she hopes that Council is getting the truth about the restaurant being a cafeteria for the workers. The parking prohibitions will control that to some degree. She stated her biggest concern is ensuring adequate parking is provided for everyone using the building. She does not believe the archway across New Haven will bring additional parking to the Front Street parking lot. This will be something nice that will continue to improve Downtown.

Mrs. Walker stated she did not mention the steps or the walk in her comments. She stated as people drive west over the causeway a boxy building is not an attractive way to introduce Melbourne. She favors a scaled down project.

Mrs. Poole stated Council has previously been advised that the Supreme Court says if the project does not meet all of the stipulations that are required by the Code and the Comprehensive Plan Council must deny it. This is not harmonious, not compatible, etc. Other people have taken old buildings and renovated them.

Mr. Gougelman commented that regarding the conditional use and site plan, the Supreme Court has ruled that if a project meets all the conditions in our Code and is consistent with Comprehensive Plan Council must approve it. Council has to weigh the evidence that has been presented to make a decision.

Mrs. Hand asked if it would be a problem to postpone until the next meeting to work out some of the issues.

Mr. Gougelman stated that two things come as a result of postponement; there are problems for both the applicant and staff. The applicant has been very clear that they need

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to get moving. There have been a lot of delays, postponement, etc. The applicant is paying \$10,000 per month in interest. The more important consideration is that staff needs guidance for some of the things Council wants to see worked out (preservation of the steps). He noted that the Mayor's motion is to deal with the steps as shown on the applicant's site plan.

Mr. Gougelman stated the applicant would probably like some indication from Council that if he goes through the process of negotiating, that they will get a favorable vote of Council.

Mrs. Palmer stated she does not see any reason to postpone. She noted that two of the grandsons of some of Melbourne's original pioneers have shown support.

Regarding stipulation "d," Mr. Hill explained that the revision to the Planning and Zoning Board stipulation was the City Attorney and City Manager's best effort to address the concern regarding the parking easement. Whether Council approves or denies the project, this issue must be resolved. Even if Council approves the project as presented, the approval is contingent on the applicant dealing with the issue of the trysting steps. The applicant is at considerable risk, even if Council approves the conditional use and site plan, they could deny the vacation of the trysting steps.

Mrs. Hand stated that based on the City Manager's comments, she can approve the first reading; however, if all of the issues are not worked out, she will not continue to support the project.

The question was called. The roll call vote was:

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

Nay: Poole and Walker

Motion carried.

Recessed: 12:53 a.m.

Reconvened: 12:58 a.m.

10. ORDINANCE NO. 2001-63 (A&V #244): (Public Hearing/Second 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) (First Reading 11/27/2001)

Attorney Gougelman read Ordinance No. 2001-63 by title. There were no comments from the public.

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

11. ORDINANCE NO. 2001-64 (Z-2001-917): (Public Hearing/Second 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 - Elting Storms and Buzz Underhill, Trustees) (Applicant - Forte Macauley Development Consultants, Inc.) (Representative - Massimo Bosso) (First Reading 11/27/2001)

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

Moved by E. Palmer/Hand for approval of Ordinance No. 2001-64. The roll call vote was:

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

Nay: Poole

Motion carried unanimously.

12. ORDINANCE NO. 2001-65 (LDR-2001-08/DOWNTOWN ARCHITECTURAL REVIEW BOARD): (Public Hearing/Second Reading) 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) (First Reading 11/27/2001)

The attorney read Ordinance No. 2001-65 by title. There were no public comments.

Moved by Walker/Contreras for approval of Ordinance No. 2001-65.

Mrs. Hand asked if the Babcock Street Redevelopment District had an architectural review process and if not, why it was not included in the Downtown Architectural Review process. She noted that the appliance store on Babcock Street has been painted a horrible color. Mrs. Poole agreed.

Mr. Hill reported that the Babcock Street Redevelopment Advisory Committee previously voted not to be included in the Downtown Architectural Review process. He stated that he will ask the committee to reconsider that action.

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.

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13. ORDINANCE NO. 2001-66 (2001 STANDARD BUILDING CODES): (Public Hearing/ Second Reading) A proposed ordinance repealing Chapter 8, Buildings and Building Regulations, and amending Appendix D by adding Chapter 13, relating to the 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) (First Reading 11/27/2001)

Mr. Gougelman read Ordinance No. 2001-66 by title. There were no public comments.

Mr. Hill reported that the ordinance has been revised to reflect an effective date of March 1 as recently adopted by the Legislature.

Moved by Poole/Contreras for approval of Ordinance No. 2001-66. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Items #14 and #15 were postponed until January 3, 2002.

NEW BUSINESS

14. COUNCIL ACTION RE: Amendment No. 2 to contract for Eber Road Widening, Project No. EO1608, Outlaw, Rice, & Jones, Inc., Melbourne, FL - \$246,948.
15. COUNCIL ACTION RE: Contract for French Drain Improvements, Chelan Drive and Montreaux Avenue, Project No. 02904, Cimbra International Corporation, Winter Park, FL - \$78,255.
16. COUNCIL ACTION RE: Consent Agenda

Moved by Hand/Walker for approval of 16 “a” through “f” as recommended. Motion carried unanimously.

- a. Purchase a new 2002 Isuzu/Aichi INH30A Telescoping Aerial Tower for the Facilities Maintenance Division, Baker Equipment, Richmond, VA - \$49,900.
- b. Purchase of pursuit vehicles and vehicle accessories, new radios/pac sets and security enhancements at the Babcock Street facility, for the Police Department, various vendors - \$113,811.45.
- c. Contract for reconstruction of various sized sewer lines at multiple locations, Insituform Technologies, Inc., Jacksonville, FL - \$340,965.10.

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- d. Resolution No. 1732: A resolution designating city elected positions for inclusion in the Elected Officers' Class of the Florida Retirement System.
- e. Improvements to first floor of City Hall including purchase of installed tile and carpeting, Arcade Carpet and Tile, Melbourne, FL (@ \$26,683) and furniture moving, Sorenson Moving Company, Melbourne, FL (@ \$10,560) - total cost \$37,243.
- f. Supplement No. 91 to Continuing Consultant's Contract for Babcock Street Realignment at Laurie Street Intersection, Project, No. 01610, Frazier Engineering, Inc., Melbourne, FL - \$38,750.

Items #17 and #18 were postponed until January 3, 2002.

- 17. SITE PLAN APPROVAL (SD-2001-03/PEACHTREE POINTE): A request for preliminary plat approval for Peachtree Pointe Subdivision on a 15.3-acre portion of an existing platted subdivision, located on the east side of John Rodes Boulevard north of the intersection of Eau Gallie Boulevard. (Owners – Elting Storms and Buzz Underill, Trustees) (Applicant – Forte Macauley Development Consultants, Inc.) (Representative - Massimo Bosso) (P&Z 11/15/2001)
- 18. ORDINANCE NO. 2001-67 (CU-2001-13/SP-2001-09/REGISTRY APARTMENTS): (Public Hearing/First Reading): A request for a conditional use with site plan approval to develop a 150 unit apartment complex on a 10-acre parcel in the C-1 (Neighborhood Commercial) zoning district, located on the west side of Babcock Street south of Eber Road. (Owner – Jerry Pezzeminti) (Applicant – Sun Central Development and Construction, Inc.) (Representative - Deion Lowery) (P&Z 11/29/2001)
- 19. RESOLUTION NO. 1733 (BABCOCK STREET): A proposed resolution and presentation by Steven Godfrey, PE, Kimley-Horn and Associates, Inc. regarding preferred alternatives for the Babcock Street Preliminary Design and Engineering.

Due to the hour, Steve Godfrey, Kimley-Horn, made a brief presentation. He noted that a few changes had been made since he addressed Council approximately one year ago. The project now runs from Valkaria Road to NASA Boulevard. He reported there has been a huge amount of public involvement. They have had input from both business groups and homeowners. Significant growth has occurred and continues to occur, especially in the vicinity of Palm Bay Road. The usage is at 30,000 vehicles per day now and is projected to grow to 50,000 in the next 20 years. He reported that the study considered the growth and employment in the redevelopment area. They have received unanimous support from the Babcock Street Redevelopment Advisory Committee.

From the agenda report: The plan includes:

Valkaria Road to Malabar Road:

Widen from two to four lanes with 22-foot median
Widen generally within existing right-of-way
Realign Valkaria Road/Wyoming Drive

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Malabar Road to Palm Bay Road:

Widen from four to six lanes with 22-foot median
Typically 27 feet additional right-of-way needed
Widen east south of the C-1 Canal
Widen west north of the C-1 Canal

Palm Bay Road to Southgate Boulevard:

Widen from four to six lanes with 22-foot median
Additional right-of-way needed varies (typically 27 feet)
Widen east on south end
Widen west on north end

Southgate Boulevard to Melbourne Avenue:

Widen to three lanes northbound and two lanes southbound with 22-foot median
Typically 30.5 feet additional right-of-way needed
Widen east

Melbourne Avenue to New Haven Avenue:

Widen to three lanes northbound and two lanes southbound with 22-foot median
End third northbound lane as a right-turn lane at New Haven Avenue
Typically 30.5 feet additional right-of-way needed
Widen east

New Haven Avenue to Fee Avenue:

Widen to four lanes with 22-foot median
Typically 52 feet additional right-of-way needed
Widen east

Fee Avenue to NASA Boulevard:

Widen from five lanes to four lanes with 19-foot median
Widen generally within existing right-of-way

All segments to have 6-foot sidewalks and 4-foot bike lanes on both sides. Additional turn-lane improvements at various intersections will be made. Right-of-way to make these improvements will be acquired as well as right-of-way for pond sites.

Separately city staff has been working with the County MPO staff and FDOT to see that the segment between US 192 and Fee Avenue received high priority for funding and completion. The MPO will be considering a resolution to this effect at its December 13 meeting.

Mrs. Poole asked about relocation of scrub jays and gopher tortoises. Mr. Godfrey stated the habitat won't be disturbed. The very south end contains a scrub jay habitat and that presence will be evaluated when the final phase is started in about 15 years. It is uncertain whether the scrub jays will exist there at that time.

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Responding to Mr. Palmer, Mr. Godfrey stated there would be no adverse affect to Fee Avenue Park.

Attorney Gougelman read Resolution No. 1733 by title.

Moved by Hand/Walker for approval of Resolution No. 1733. Motion carried unanimously.

Following item #19, Council agreed to adjourn and reconvene on Thursday, January 3, 2002.

Items #20 – #23 were postponed until January 3, 2002.

20. RESOLUTION NO. 1734 (BABCOCK STREET REDEVELOPMENT AREA): (Public Hearing) A proposed resolution authorizing expansion of the Babcock Street Redevelopment District to include the area north of Laurie Street to U.S. 1 and an area west of Airport Boulevard, along NASA Boulevard.
21. COUNCIL ACTION RE: Discussion of City payment of a brokerage fee for the sale of the former Palms 8 Theater site.
22. COUNCIL ACTION: A request for City co-sponsorship for Blue Wave Certification at Paradise Beach Park.
23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS
24. ADJOURNMENT

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

The meeting adjourned at 1:29 a.m.

/ s /
Assistant City Clerk – 12/20/2001

Approved by Council _____