

CITY OF MELBOURNE, FLORIDA
MINUTES – SPECIAL MEETING BEFORE CITY COUNCIL
JANUARY 3, 2002

A special 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.

A. All present gave the Pledge of Allegiance to the Flag of the United States of America.

B. 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
	Cathleen A. Wysor	City Clerk
	Peggy Braz	Planning and Economic Development Director

C. Continuation of unfinished items from the December 11, 2001 Council Meeting.

14. COUNCIL ACTION RE: Amendment No. 2 to contract for Eber Road Widening, Project No. EO1608, Outlaw, Rice, & Jones, Inc., Melbourne, Florida - \$246,948.

From the agenda report: Outlaw, Rice & Jones, Inc. has submitted a fee proposal to design a four-lane Eber Road between Dairy Road and Babcock Street. This is an amendment to a contract the firm was awarded in 1991. A road design was nearly completed at that time; however, funds were not sufficient to proceed with construction.

The four-lane roadway will be separated by a grassed median. The project will also include the related drainage systems and stormwater treatment systems. The engineers will assist the city in acquiring a suitable 3.5-acre site for a stormwater treatment pond. Due to changes in stormwater treatment requirements and the roadway layout, this will be essentially a new design.

The estimated construction cost for this project is \$3,025,000. The engineer's fee proposal is \$246,948. The fee is broken down into basic engineering services, which include preliminary design, final design, assistance during the bidding phase, and construction contract administration. The lump sum fee for these basic engineering services is \$182,318. Other services are defined as additional services, which include an investigation and report on the pond site, field surveying, work associated with filing and obtaining the necessary permits for the project, locating underground utilities along the route, and an allowance for reimbursable expenses. The total of the fee amounts for each of these additional services is \$64,630.

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The engineers will have 120 days to complete the preliminary design. After it is reviewed and approved by the city, the engineers will have 90 days to complete the final design. Staff anticipates the construction contract award could be around November 2002. This would allow time for permits to be approved.

Mrs. Poole asked for additional information regarding the first amendment. Mr. Ralls said that may have been the study to identify potential stormwater pond sites.

Mrs. Poole noted that much of the property from Babcock Street to Dairy Road on the north side belongs to Courtelis. She recommended staff contact Courtelis and request that property be donated for this project. Mr. Ralls said they have not offered to give property; however, they will have to pay impact fees when the property is developed. Mr. Hill noted that they have offered to donate land for a fire station.

Moved by Hand/E. Palmer for approval of Amendment No. 2 to the Outlaw, Rice & Jones, Inc. contract for engineering services associated with widening Eber Road in the amount not to exceed \$246,948.

In response to Mrs. Poole, Mr. Ralls elaborated on the changes in stormwater requirements, which necessitated the new design. Mr. Palmer asked how much additional cost is involved as a result of changes in the stormwater requirements. Mr. Ralls said approximately \$225,000 because of more stringent standards.

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

15. COUNCIL ACTION RE: Contract for French drain improvements, Chelan Drive and Montreaux Avenue, Project No. 01903, Cimbra International Corporation, Winter Park, Florida - \$78,255.
- 15a. COUNCIL ACTION RE: Change Order No. 1 in the amount of \$939 to the contract with Cimbra International Corporation due to the delay in the award of the bid.

Mayor Buckley referenced correspondence from the City Manager requesting item 15a be added to the agenda. By consensus, Council agreed.

Mr. Hill reviewed the agenda report. The project consists of the installation of approximately 800 linear feet of PVC French drain on Chelan Drive and approximately 580 l.f. of PVC French drain on Montreaux Avenue. Associated work will consist of removal/installation of 15 concrete driveways and 1,380 l.f. of concrete sidewalk. All disturbed areas will be sodded to match adjacent properties. The completed work will allow for better drainage of the sub-grade and base of the roadway, which is in a state of deterioration due to the presence of a groundwater.

The project was developed after the homeowners complained about water coming up through the pavement. Staff believes this is due to a shallow layer of hardpan, which does not allow water to percolate downward. Instead the groundwater moves from front

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yards toward the street. There is no hardpan under the street because it was excavated for water, sewer, and drain lines.

The developer met all requirements for subdivision construction, which include road construction, drainage and utilities. The contributing factor is the hardpan remaining in the building area. There are no regulations on this subsurface condition. The road pavement will deteriorate due to the saturated condition of the base combined with traffic loading. Therefore, it is important to proceed with this remedial work.

Three bids were received and the low bidder is Cimbra International Corporation of Winter Park, Florida in the amount of \$78,255. Total construction time is 60 days. The change order, in the amount of \$939, is required due to the delay in awarding the contract caused by the postponement from the December 11 meeting. The original bid from Cimbra International Corporation was over \$19,000 less than the next lowest bidder.

Mr. Contreras asked if the contractor provided an itemized list for the \$939 change order. Mr. Ralls replied that the city did not ask and the contractor did not provide a detailed breakdown. He added that if we don't contract with them, they have no obligation to honor their bid. He noted that although a detailed account was not provided, he believes the contractor has been honest with the change order. Mr. Contreras said it would behoove the contractor to support the request with an itemized list; therefore, he is unable to support the award.

Mrs. Poole asked why the item can't be re-bid. Mr. Ralls pointed out that the next bidder is \$19,000 higher than this contractor. He said if the item is re-bid, we would probably not receive this price. He added that he would not bid the same price if he were the bidder. Mr. Hill agreed that once opened, the bidders have the benefit of knowing what the others bid. He confirmed for Mrs. Poole that the bid notice was provided to many contractors.

Mrs. Palmer said she was surprised at how much lower this company was than the next highest bidder. She agreed that once the bids are made public, the city would be given a substantial increase in the contract price. Mr. Ralls added that there is also a cost involved with the effort to re-bid.

Mr. Palmer said he does not believe this is the contractor's fault. It was strictly a sequence of events that he had no control over; therefore, he has no problem with the change order.

Mrs. Palmer asked Mr. Ralls if he believes this contractor can do the job. Mr. Ralls said they seem to be confident and they have a good record. He added that it is rare that we don't have successful contractors.

A brief discussion followed regarding similar situations in the city occurring in older subdivisions.

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Moved by E. Palmer/Hand for approval of the contract with Cimbra International, Winter Park, Florida for French drain improvements at Chelan Drive and Montreaux Avenue in the amount of \$78,255, approval of funding from savings in various roadway projects, and approval of Change Order No. 1 in the amount of \$939. Motion carried unanimously.

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 Macaulay Development Consultants, Inc.) (Representative - Massimo Bosso) (P&Z 11/15/2001)

Ms. Braz briefed Council. The property is now platted as the Indian River Groves and Gardens Subdivision. This subdivision was never fully developed and the adjacent Cypress Bend and Magnolia Lakes subdivisions are platted over portions of the old Indian River Groves and Gardens Subdivision. The property is zoned R-1B (Single-Family Residential) and the adopted Future Land Use is Low Density Residential.

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

The applicant is requesting a variance from the City Code requirement to connect to an existing, undeveloped street. Chapter 29, Section 29-6 (b)(1) b. and c., of the City Code requires that a street connection be made to stub streets that are located adjacent to a parcel. An undeveloped street exists at the southwest corner of one of the lots. The developers of Magnolia Lakes were granted a variance from providing a connection to the adjacent vacant property including the Mosley Road right-of-way. There is opposition by other property owners in Magnolia Village to a design proposed by the applicant if a connection should be required and the developers fear that it would become a cut through for those wishing to avoid the light at John Rodes Boulevard.

Mosley Road is an undeveloped street right-of-way that terminates at the southeast boundary of the proposed plat. This street extends south to Eau Gallie Boulevard. When developed, the street could provide an alternative access to the subdivision as well as provide access to the adjacent, but still undeveloped, commercial tracts located on either side of the street. This street would most likely be constructed when one of the commercial tracts develops. This would be the same type of design and joint access that was created when Trent House Drive was platted east of this site and is prevalent with the design of many subdivisions located along major roadways. This alternative access will reduce the reliance of traffic generated by the subdivision to use the Eau Gallie Boulevard/John Rodes Boulevard intersection. The section of John Rodes Boulevard

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adjacent to the proposed subdivision is carrying approximately 12,700 vehicles per day. Capacity on this roadway at the adopted level of service is 15,500 vehicles per day. While the roadway is operating at level of service “D”, there is much vacant property in the area including industrial zoned property that could place strains on this roadway and intersection.

Providing the connection will not substantially limit the applicant’s reasonable use of the land and is not necessary for the applicant to realize the preservation and enjoyment of a substantial property right. Granting of the variance will not be detrimental to the public welfare or injurious to the property or to other territory in which the property is situated, does not cause a practical difficulty since a street stub can easily be provided to the Mosley Road right-of-way, and does comply with the Comprehensive Plan standard expressed in the Future Land Use Element Objective 6a and the Transportation Element Objective 4e.

A sidewalk is required along the John Rodes Boulevard frontage. Since John Rodes Boulevard is a county maintained road it would be appropriate to permit the applicant to pay into the Bikeways/Sidewalks Trust Fund for the frontage. The city proposes to construct a pedway along John Rodes Boulevard north from Eau Gallie Boulevard with cooperation from the county.

The Environmental Impact Assessment report indicates that the site is primarily a scrubby pine flatwoods with a thick understory of palmettos. There is a one-acre wetland in the center of the property. Permits will be required to take the wetland. Approval could include mitigation by the St. Johns River Water Management District. The westerly portion of the property is located within a special flood hazard area (Flood Zone AE with a base flood elevation of 20 feet). The subdivision will require fill dirt, which will result in elevating this portion of the development outside the flood zone. The applicant will need to file a map amendment with the Federal Emergency Management Agency to change the designation of future lots. Several gopher tortoise burrows were found on the property. It is thought that five or fewer tortoises are located on the site. Removal or taking of these tortoises will require a permit from the Florida Fish and Wildlife Conservation Commission.

The Planning and Zoning Board did not recommend approval of the variance; however, it recommended approval of the preliminary plat, consisting of a one-sheet plan prepared by William Mott Land Surveying Inc. of Satellite Beach, Florida, with Drawing Number 2010459 and file dated November 9, 2001 with the findings listed in the agenda package and the following conditions:

- a. The plat is subject to approval of a variance from City Code, Chapter 29, Section 29-6 (b)(1) b. and c. meeting the standards as described in Section 29-8.
- b. The applicant shall make payment into the city’s Bikeways/Sidewalks Trust Fund for the length of the subdivision boundary abutting John Rodes Boulevard. Said trust fund payment shall be used to offset the construction costs of a sidewalk/pedway along John Rodes Boulevard north of Eau Gallie Boulevard.

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- c. Any change to the preliminary plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the preliminary plat includes, but is not limited to: a) any decrease in the number of access points including public or private streets to or from the subdivision, or b) an increase of more than 5 lots.
- d. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.
- e. Upon completion of the subdivision improvements, the applicant/developer shall file a map amendment with the Federal Emergency Management Agency to correctly identify the flood zone designation/elevation of the property as a result of the improvements.

Additionally, the Engineering Department is concerned that two items, which were written in the plat review letter to the applicant, were not adequately addressed on the plat. As a result, they would propose two additional stipulations, as follows:

- f. A minimum 20-foot drainage tract must be created along the north property line where Peachtree Pointe Subdivision abuts Cypress Bend unless a piped drainage system with yard inlets is provided which is acceptable to the City Engineer. The Homeowners' Association will maintain the 20-foot drainage tract. If the developer uses a piped drainage system it may be located in an easement. The piped drainage system will be maintained by the homeowners' association
- g. The top of the bank for the stormwater pond cannot be located within lots.

Mrs. Poole expressed concern with the Flood Zone AE and noted that the amount of fill dirt required will kill the trees.

Mrs. Walker asked who would ensure that the homeowners' association does all the things indicated in the conditions. Mrs. Braz replied that the conditions will be included in the declarations of covenants and restrictions. Other items would be inspected during construction.

Mrs. Walker asked how an ongoing maintenance problem would be addressed. Mrs. Braz said the homeowners' association will be required to address that. Mr. Hill said that Mrs. Walker's concerns are on target – that is why the city wanted a drainage tract as opposed to private drainage easements located in rear yards. As a tract, the property would not have fences or other items, which will impede maintenance.

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Mrs. Walker asked what recourse adjacent property owners would have if the homeowners' association does not do what it is supposed to. Attorney Gougelman explained that there may be recourse through the city's stormwater maintenance agreement program. The association is required to maintain on site drainage. If it does not, the city can perform the maintenance and bill the association. The second approach is that individual owners from the adjacent subdivision suffering a nuisance type problem would have a private right of action against the adjacent property owners. They could choose to go to court on their own.

Mrs. Walker noted that these two options don't provide a lot of protection.

Mrs. Palmer asked if the parties involved are the same ones who applied to the city for a recycling facility and then sold the property to the county. Mrs. Braz said that Tim Jelus is part of Forte Macaulay and he is the one that came to the city for a conditional use (for a recycling facility). Mrs. Palmer referenced the Sarno Road landfill issue and asked what assurance the city has regarding the plans for the subject property. Mrs. Braz replied that the request is for a preliminary plat and the applicant would have to return for a final plat. The final plat would be recorded in the public record.

Mr. Gougelman said he suspects that Storms and Underhill are under contract to sell the project to Peachtree Pointe LLC. Approval of the plat is likely a condition of sale. Peachtree probably hired Forte Macaulay to build the project. Hugh Evans and Tim Jelus, who are with Forte Macaulay, were involved with the Sarno Road landfill issue.

Mayor Buckley called for disclosures.

Mr. Contreras said he spoke with Philip Schirack (4748 White Heron Drive) today who is in favor of Mosley Road being connected and open. Mr. Palmer said he had a similar conversation with Mr. Schirack. Mrs. Poole said she did, too. Mrs. Poole added that she is familiar with the (drainage) problems in Cypress Bend. Mrs. Walker said Mr. Schirack phoned; however, she did not speak with him. Mrs. Hand said Mr. Schirack called her and expressed support for the road to be opened. Mayor Buckley said he talked with Mr. Schirack today who thought that opening Mosley Road would provide some traffic relief. The Mayor added that Mr. Schirack said he would leave the issue to Council to determine what was best.

Max Bosso, 1688 W. Hibiscus Boulevard, addressed the drainage concerns. He stated that the installation of underdrains along the north property line will take care of the drainage from Cypress Bend that will enter this stormwater system. He noted that the lots on the north side drain towards this property.

Regarding the variance request, Mr. Bosso said he believes it would be beneficial to grant the variance because the connection to Mosley Road would be detrimental to nearby properties. If the road is built, some of the lots along the adjoining Magnolia Lakes Subdivision would end up with a road in their backyard. A road in front and back of a property usually decreases the value of property.

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Continuing, Mr. Bosso said Commander Bell with the Melbourne Police Department agreed that people would use Mosley Road as a bypass; the roadway would become a thoroughfare. Increased traffic also increases the chances for accidents. Additionally, he discussed with the Police Department the issue of one entrance decreasing burglary, vandalism, theft, etc.

Mr. Bosso noted that roadways are required to be connected from like districts. He pointed out that the subdivision is residential and the property east and west of Mosley Road is commercial. If the connection is made, commercial trucks will drive through the subdivision to access the commercial properties. Mr. Bosso discussed the possibility of Mosley Road being vacated in the future. He stated that if this occurs, the connection would be a dead-end road that leads nowhere.

Mr. Bosso referenced the letter from Gary Huttman, Traffic Engineer, Ghyabi Lassiter and Associates, Inc., Altamonte Springs, included in the agenda package. A portion of the letter indicates that the roadway would enable traffic to avoid the signalized intersection at John Rodes and Eau Gallie. Additionally, the connection does not provide any connectivity for the other residential communities. And, the connection does not create or even contribute to the creation of a grid system.

Mr. Bosso concluded his presentation and asked Council to grant the variance. He noted that a similar variance has been granted before on a larger subdivision. A variance would not be detrimental to this development or the nearby subdivision. Mr. Bosso also referenced the petition (in the agenda package) signed by Magnolia Lakes Subdivision residents requesting the variance be approved.

Mrs. Poole disagreed that the subdivision would be used as a cut through if the connection were made. She noted that traffic backs up past the Cypress Bend entrance and it would make more sense for drivers to use the traffic light.

Mrs. Palmer asked Mr. Bosso if he agreed with the two additional stipulations. Mr. Bosso replied that he agrees with all the stipulations.

Mrs. Poole asked if the plat requires approval of the variance. Mr. Bosso said they could resubmit without the variance. He displayed a plan, which shows the same number of lots; however, a roadway would run behind the Magnolia Lakes lots. He noted that is why residents of Magnolia Lakes signed the petition in support of the variance.

Mayor Buckley opened the public hearing.

Lorraine Fadden, 4763 Silver Heron Drive, Cypress Bend Subdivision, stated that this is a high hazardous flood zone. The area needs to be completely filled, which will kill the trees. The trees provide a barrier for traffic and noise. Ms. Fadden explained that Mosley Road has been proposed since the inception of Magnolia Lakes. It has been the city's intention to open Mosley Road and that should not be taken away just because the developer wants more land.

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Ms. Fadden described the flooding that occurred in 1995 after Hurricane Erin. She noted that her home, along with 40 others, flooded. She stressed that she wants to ensure that any development has proper drainage and that (maintenance) not be left to the homeowners of a new development.

Mrs. Palmer said she does not understand the interest by the Cypress Bend homeowners in having Mosley Road opened. Ms. Fadden replied that Mosley will provide another way to keep traffic off of John Rodes Boulevard. She elaborated on the traffic problems in the area.

Philip Schirack, 4748 White Heron Drive, submitted photographs showing flooding in Cypress Bend and Cypress Cove, the subdivision to the north, following Hurricane Erin.

Mr. Contreras said that many areas experienced flooding following the 10" of rainfall during Hurricane Erin. Mrs. Poole responded that this area suffered more.

Moved by Poole/E. Palmer to deny the site plan and leave it open to allow the applicant to resubmit without the variance. Motion carried unanimously.

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)

The City Attorney read the ordinance by title.

Ms. Braz briefed Council. The property was annexed in January 1989 and C-1 zoning was established in 1990. The Future Land Use is mixed use Commercial/Medium Density Residential. The property contains an old garage/storage building located in the middle of the lot. The property had been used for agricultural purposes prior to annexation.

The property consists of 10 acres and is covered with long leaf pines, palmetto scrub, a few oaks, wax myrtle, Brazilian pepper and melaleuca trees. The Cinnamon Cove Subdivision is located to the south and is zoned R-2 (Cap 6) (One-, Two- and Multiple-Family Residential with a cap of six units per acre). The property to the west is vacant and zoned R-A (Residential Holding) and three large parcels zoned R-2 (Cap 6) are located to the north, each containing a single-family home.

The proposed plan consists of a 150-unit apartment complex with 10 buildings. The structures will include seven three-story buildings and two small garage/studio apartment buildings. These structures will include six studio (efficiency) apartments, 60 one-bedroom units, 36 two-bedroom units and 48 three-bedroom units. The three-story buildings will be a maximum of 44 feet in height to the peak of the roof. The average

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building height measured one-half the way up the roof will not exceed 40 feet. The average roof elevation of 40 feet is the maximum height permitted by Code.

City Code, Appendix B, Article XII, Section 9 (A) (3) (d), requires a conditional use for residential developments to be constructed in the C-1 zoning district when located on property exceeding one acre in area and/or when located adjacent to a four lane collector or arterial street as designated in the Comprehensive Plan. This site meets both of these conditions. Article XVIII (21) requires residential development in the C-1 zoning district to comply with the yard requirements specified in the R-2 zoning district and Article XX requires site plan approval for the project with site plan review and design criteria and other land development regulations adopted by ordinance. In addition the site must comply with the standards and criteria of Article XV.

The applicants were not required to provide a traffic study because the project will not generate three percent or more of the maximum volume for the adopted level of service. The development will generate approximately 948 daily trips to and from the project. A single access driveway will be provided to Babcock Street.

The buildings will have a minimum setback of 110 feet from the Babcock Street right-of-way and a minimum of 35 feet from the properties to the south, north, and west. This complies with the standard established by Article XVIII (18) (Supplementary District Regulations). A buffer of a minimum of 35 feet wide will be provided between the Cinnamon Cove Subdivision and the closest apartment building. In most areas the buffer will be substantially wider. In addition to this setback, the buffer area will be planted with trees and shrubs and a visual screen wall will be provided along the property boundaries where adjacent to the single-family uses.

The apartment complex will provide 300 parking spaces. City Code, Appendix D, Chapter 9, Article V, Section 9.72 (47), requires a minimum of two parking spaces per unit. An internal sidewalk system will connect the parking areas and clubhouse/recreation amenities and provide a connection to the public sidewalk along Babcock Street. The parking lot will be gated similar to the Hickory Point complex on University Boulevard. The public will have access to the clubhouse area. The proposed development is located along an existing Space Coast Area Transit route.

The complex will provide on-site recreation features, including a 3,000 square foot clubhouse, a swimming pool, a basketball court and a volleyball court.

Ingress and egress from the site will be from Babcock Street, the only adjacent right-of-way. The driveway will align with the Crown Boulevard intersection with Babcock Street and a southbound right turn lane and a northbound left turn lane will be provided. The driveway entrance will have a landscaped median.

The Environmental Impact Assessment report indicates that the site does not contain any endangered or threatened species. The tree survey indicates the site is mostly covered with pines and a few oaks. A wetland exists in the southwestern portion of the site. This wetland will be modified and improved by removing invasive exotic trees that have grown

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on the site since the agricultural use was discontinued. Two retention basins will provide stormwater treatment with discharge into the public drainage system within Babcock Street. Permits from the St. Johns River Water Management District will be required to modify this wetland and incorporate it into the proposed retention system. Comprehensive Plan policies encourage this type of design.

Neighbors from the Cinnamon Cove Subdivision expressed concern at the Planning and Zoning Board meeting. The developer will be meeting with these homeowners prior to the Council meeting.

The site will be developed with a less intensive use than what could be constructed (a shopping center) on the site under the existing Code. This use would generate significantly fewer trips per acre as an apartment complex than if built as a shopping center. Under the Comprehensive Plan, Future Land Use Element, the site is permitted for up to 15 units per acre.

The Planning and Zoning Board recommended approval of CU-2001-11 with the findings contained in the agenda package the following conditions:

- a. The conditional use and the proposed plan of development shall be consistent with the one-page site plan (SP-2001-09) for Registry at Melbourne, prepared by Kimley-Horn and Associates, Inc., of Orlando, Florida, with Job Number SUN-CENTRAL, dated December 16, 2001.
- b. Any substantial change to the site plan will require reevaluation of the site plan by the City Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: a) a decrease of 5% of the open space or vegetative areas on site; b) any increase in the number of access points shown on the site plan; or c) a 10% or more increase in building size, height, or any increase in the number of units.

- c. All hardwood trees shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve trees.

Initially, trees shall only be removed for driveways, drainage facilities, and paved parking spaces and aisles. Trees in the footprint of the structure shall be removed only in conjunction with a building permit. All trees to be removed shall be identified by Code Compliance personnel and an evaluation shall be made to determine the possibility of saving hardwood trees. Trees to be preserved must be protected by barricades to the drip line during construction. All invasive non-native vegetation shall be removed from the site.

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- d. All three-story building setbacks shall be 45 feet from adjacent residentially zoned property lines.

Mayor Buckley called for disclosures. Mr. Contreras stated that last month he spoke with Gillian Forte (137 Cinnamon Lake Circle). The conversation related only to the fact that the issue would be coming up before Council. Mrs. Poole said she received a call from Mike Pruitt who was curious about her position on the request. She noted that he is not familiar with the quasi-judicial process.

Philip Nohrr, 1800 West Hibiscus Boulevard, attorney representing the applicant, discussed the request. He noted that the property is currently zoned for a commercial use, yet they are proposing a less intense use of the property. The total traffic generation will be about 960 trips per day. If the site were developed as commercial, the actual traffic generation would be four times that amount. Without taking recapture into consideration, the traffic would be 10 times that amount.

Mr. Nohrr reported that they have had meetings with homeowners from Cinnamon Cove and talked with former Mayor Mullins for input from the Crown Heights residents. He noted that they will commit to Council that if/when traffic warrants meet signalization, they would participate financially in any signal warranted for that site.

Continuing, Mr. Nohrr said the three-story building will be located 45' to the north of the property line. The drainage will be designed for the existing conditions and the area will not be negatively impacted. A chain link fence will be located on the western portion of the south side to about Lot 35. The property owner at that point asked for a masonry type of fencing and the applicant has agreed to provide that. From that point forward to the setback line, a hedge or landscape buffer will be installed. This would be in addition to the city's landscape regulations.

The development is designed to be a gated community with only one entrance. This will provide an upscale type of apartment living in the area. The existing wetland will be converted to a retention area.

Mr. Nohrr stated that he believes the property meets/exceeds all of the city's requirements. This development is going to be more compatible with the property owners to the south than a commercial development. This is a \$12 million project that will provide economic stimulus. He concluded by saying the property has a lot of positives and they will try to design in every way to be compatible with the property owners to the south.

In response to Mrs. Hand, Mr. Nohrr said the parking spaces would be 11' wide.

Jay Jackson, Kimley-Horn and Associates, stated that the note on the plan, which indicates a maximum height of 75', is a typographical error. The height should be listed as 45'.

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Mrs. Poole expressed concern that there is no note on the site plan to indicate when it was revised. She added that the first plan showed 24 two-story units. This plan shows three story units.

Mr. Jackson said he believes they are all three stories, with the exception of one building that will be two stories on the ends with a three story portion in the middle. He elaborated on the layout of the site.

In response to Mrs. Poole, Mr. Nohrr commented on the following: the clubhouse will not be open to the public; he believes 300 parking spaces is all the Code requires; if six additional spaces are required for the clubhouse, they will be added; the pool is conceptual at this point so the dimensions are not available; the demand will determine the type of amenities; a tot lot or playground would be provided; and the development is not classified as “affordable housing.”

Mayor Buckley pointed out that the plan indicates 304 parking spaces. Mr. Contreras asked the rental range. Mr. Nohrr said \$695 - \$1,000. Mrs. Palmer referenced one of the findings (outlined in the agenda package), which indicates that the development will provide additional affordable housing opportunities. Mr. Nohrr said the development is not designed to be affordable housing as that term is defined in federal funding projects.

Mrs. Palmer said she is concerned about security. She asked if the management has been selected. Mr. Nohrr said the management company has not been selected; however, they do not plan to have on site security. Mr. Nohrr agreed with the stipulations.

Mr. Palmer asked for an explanation of the zero building setback on the site plan. Mrs. Braz said if development were commercial next to commercial, the setback would be zero. However, they are required to have 45’ and that is a stipulation.

Responding to Mr. Palmer, Mr. Nohrr explained the 5’ landscape buffer on the plan versus the 7 ½’ landscape buffer on the plan.

Mrs. Poole recalled when a shopping center was proposed for the property and Council turned it down. She added that a light is already proposed at South Lakes and Lake in the Woods. Mrs. Hand referenced the delay in the traffic signal at Wal Mart and the Dog Track on Wickham Road. She asked what criteria will be used and what amount of time will pass before a signal is installed. Mr. Nohrr said the criteria is mandated by the governing body of the roadway. As far as the time period, he said they are willing to commit to six months or any other reasonable time frame. He stressed that they are not trying to make an empty offer. Mr. Hill recommended that the language be revised to tie this light to the South Lakes light. One will have an effect on the other because of the location.

Joe Mullins, 4112 South Knight Avenue, President of the Crown Heights Civic Association, stated that he also serves on the advisory committee for the Babcock Street project. He noted that the consulting engineer has informed them that they are eligible,

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by distance, for a light at Crown Heights. If the warrants are met, it should be approved by FDOT.

Continuing, Mr. Mullins said the Crown Heights residents feel that a stipulation should be included providing that when the warrants are met, the traffic signal will be installed. He described the hazards involved in trying to make a left turn onto Babcock Street. Additionally, he recommended that U-turns be prohibited. In response to Mrs. Poole, Mr. Mullins said the development meets Code and it is a proper use of the land within the context of the Zoning Code. The residents accept that and know that it could be worse.

Mary Jerrell, 323 Cinnamon Lake Circle, said her property abuts the proposed development. She asked if the three-story apartments will have elevators, where the rental office will be located and whether this will be affordable housing. Additionally, she noted that a representative of the Pruitt Agency has provided information that conflicts with the information in the (agenda report).

Ms. Jerrell said she asked the representative from Pruitt why the entire development was not going to have a block wall. She said he replied that they do not want to wall in the residents. Ms. Jerrell noted her concern about three-story apartments. She submitted a list of other two story apartments in Melbourne and said 99% of the apartments in Melbourne are two stories.

Willie Torain, 329 Cinnamon Lake Circle, said he is concerned about privacy as it relates to a three-story building proposed 45' from his backyard, security, lighting, and drainage. He expressed that the neighborhood will begin to experience issues and the residents will no longer have piece of mind.

Carmine Laurice, 143 Cinnamon Lake Circle, asked how the proposed widening of Babcock Street will affect this project. She pointed out that there was a fatality at the South Lakes and Eber Road intersection and her subdivision is in the center of the two areas. Currently, residents attempting to make a left turn have to wait for the light to change at Eber. If the apartment complex is built, it will affect the timing. She stressed that her concerns relate to the density of a three-story complex. She added that she does not believe it is compatible with the area.

Thomas P. Victory, 238 Cinnamon Lake Circle, asked the occupancy rate and questioned if Melbourne has a shortage of available rental apartments. He asked if additional apartments are really needed adjacent to a residential community. Additionally, three-story structures will have an affect on the surrounding property, especially with lighting.

Mayor Buckley explained that the city is not able to restrict development simply because a vacant development is located nearby.

Sanda Victory, 238 Cinnamon Lake Circle, said her concerns pertain to the noise and pollution that will be created by the new complex. She stated that Cinnamon Cove is quiet and peaceful and she does not want that to change. The number of cars waiting to

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turn onto Babcock Street will create noise and pollution. She asked for additional information about the security gates proposed for Registry Apartments.

Mary Palladino, 337 Cinnamon Lake Circle, said she owns Lot 36, which is pie shaped. She noted that she is concerned about her property. She requested a brick wall because she has a pool and does not want anyone entering her property. She asked if the wall can be constructed higher than 6'. Also, she expressed concern about the loss of privacy with a three-story building and asked if the dumpster can be moved farther from her property line. Ms. Palladino said the apartment buildings have to be better than a shopping center; however, the applicant has to think about the neighbors to the south.

Hugh Bain, 292 Cinnamon Lake Circle, asked if 300 parking spaces is the final number and if additional spaces are being considered for visitors and guests. He noted that the (Planning and Zoning) minutes state that the public will have access to the clubhouse. Mr. Bain concluded by saying a three-story complex is not harmonious with the surroundings. It will be owned and managed by absentee landlords and has the potential to open the floodgates for more unsightly structures.

Keitha Dattilo-Bain, 292 Cinnamon Lake Circle, expressed concern about the air, noise and light pollution; urban sprawl, loss of habitat, planting of exotic landscape, transformation of the wetland, groundwater discharge, and filtration system. She noted that the residents are not totally opposed to the development; however, they are concerned that the proposal is not harmonious with the area and does not strike a balance with the conservation and native habitat. The residents of Cinnamon Cove chose this community for its privacy and security, which are created by native flora. She recommended that more natural vegetation and hardwoods be conserved, that the proper permits be obtained for the wetlands, and that proper permits be acquired if certain species are found on the site.

Kevin Turner, 227 Cinnamon Lake Circle, asked if the demographics support \$1,000 apartments and how this represents affordable housing. He noted that if the apartments fail, the residents will be stuck with government assisted housing that will be detrimental to the surrounding property values.

Ronald Newkirk, 232 Cinnamon Lake Circle, said he is concerned that the proposal will set a precedent, which will affect the property on both sides of the subdivision entrance. He added that three-story apartments are not necessary and the residents of Cinnamon Cove do not want the development.

Connie Vadnal, 149 Cinnamon Lake Circle, said that residents have been told details about the development that have turned out to not be true; plans have changed, and figures have changed. The residents are concerned. She read from the findings, which indicate that the conditional use will not be injurious to the neighborhood or detrimental to the public welfare and asked who determined this. She concluded by saying that if this is the information Council is basing its opinion on, then the item should be given more time for review.

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Paul Garmon, 317 Cinnamon Lake Circle, Lot 32, said he backs up to the center of the proposed retention pond. He expressed concern about how the retention will be taken care of and stated that he has seen the entire field filled with water up to his yard. Additionally, he noted that he works with many disabled people and would like to know if the apartment complex will have elevators.

Recessed: 9:57 p.m.
Reconvened: 10:06 p.m.

In response to the public comments, Attorney Nohrr made the following statement: the lighting will be within Code and designed to stay entirely on the subject property; the noise limit will meet or exceed Code; the dumpster will be moved from its proposed site; chain link fence is what he thought the Cinnamon Cove residents wanted; his client is willing to plant sycamore trees, or any other trees the residents wish, along the south property line to screen the three-story building; elevators are not planned and not required; they will meet/exceed ADA requirements; and people with disabilities will have preference over the first floor units.

Continuing, Mr. Nohrr said he can't explain how "affordable housing" crept into the description. The development is not designed as an affordable housing development. Regarding the wetland area, he noted that it is in a poor or degraded condition. It will be improved and made part of the drainage system. St. Johns River Water Management District regulations and city regulations will govern the retention. Mr. Nohrr agreed that traffic will be generated from this development; however, it will be significantly less than if the property were developed under the current zoning. He stressed that they will not significantly add to the traffic on Babcock Street.

Mr. Nohrr informed Council that the widening of Babcock Street will not affect this development. He concluded by saying they have offered a project that meets or exceeds all of the City Codes. They have offered additional buffering, will not open the clubhouse to the public, and believe this is a worthwhile project that will be a credit to the city.

Mayor Buckley asked if the rental office will be located up front near the clubhouse and if the gates will remain open. Attorney Nohrr responded yes regarding the rental office and said that the gates will not remain open; the residents will use openers.

Mrs. Poole asked about a two-story building shown on the northeast portion of the site plan and on another plan it shows a three-story building. Mr. Nohrr said a portion of the building is two stories and the other portion is three stories. He added that the height will be 38' for the living area but the roof peak will be 44'.

Mrs. Hand referenced the offer to plant sycamore trees and asked if that type of tree loses its leaves. Mr. Nohrr said they are willing to plant another type of tree. Mrs. Hand asked if the site can be rearranged so the three-story building is not close to the surrounding neighborhood. Mr. Nohrr said no and added that he has no flexibility on that issue. He added that he is willing to plant a different type of tree and that they have met the proper setback according to Code.

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In response to Mrs. Poole, Mr. Jackson said SJRWMD will require pollution abatement to be provided with the retention. Mrs. Poole asked who performed the Environmental Impact Assessment and Mr. Nohrr said Solutech from West Palm Beach. Mrs. Braz confirmed for Mrs. Poole that any firm with the right credentials is acceptable.

Mrs. Poole questioned how a previous EIA indicated certain species of birds on the site and now the current EIA indicates there are no threatened or endangered species. Mr. Nohrr replied that licensed professionals performed the EIA. If the report is not as indicated, they will still be subject to certain rules and regulations.

Moved by Walker/Contreras for approval of Ordinance No. 2001-67, which includes the site plan.

Mrs. Walker stated that the applicant is willing to do all it can for the neighbors. Additionally, the development is less intensive than commercial.

Mr. Palmer agreed that this is better than commercial; however, he stated that the density is too great and the buildings are too high. In his opinion, it is a poor site plan.

Mrs. Palmer said her main concern relates to the density. The traffic and safety considerations are different than if the site were developed commercial. There is a potential for 300 vehicles entering/exiting the same time each day. Commercial may have more cars; however, the trips are spread throughout the day. There is also a privacy consideration. A commercial building may not be open at night or have windows located in the rear. The apartments will have balconies overlooking the adjoining subdivision. A development that places this many people in a small area will result in increased calls for police and fire rescue. She noted that she also has to consider the potential for crime. The facility has the potential to house a lot of young people with little recreational facilities.

Mrs. Hand said she agreed with the concerns that have been discussed regarding the traffic. She added that the quality of life for the people in the neighborhood will be affected in regard to privacy. That many people living in a small area will bring crime into the area. She noted that the apartments in her area create problems in the neighborhood and she does not feel the proposed development will improve the quality of life.

Mr. Contreras said three-story apartments surround him on the east, west, and south sides. They have not been intrusive. Also, affordable housing is located behind him and that has not lead to an increase in crime. Regarding lighting, he pointed out that the developer is amenable to ensure that high intensity lighting does not affect the adjacent property. The applicant has also agreed to additional trees. This type of development is less intrusive than a strip mall. He commented that a development will probably be located on this property sooner or later; however, the residents won't be content with any development.

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Mrs. Poole stated that the proposed development is not compatible and harmonious with the surrounding uses. The 150-unit complex with 300 parking spaces will lower the value of the surrounding homes. Also, 900-plus trips per day will affect Babcock Street, which is already congested. The fumes and noise from 300 cars will be unhealthy and annoying. The noise from the air conditioner units will also have an impact.

Continuing, she noted that the applicant has not received approval from SJRWMD to modify the wetlands. There are birds and species of special concern in the wetlands area. Pictures were brought forward when a shopping center was proposed for this site, yet the current EIA indicates that there are no endangered or threatened species. The site plan is not compatible and it does not meet the goals and objectives of the Comprehensive Plan.

Mayor Buckley said that the developer has indicated that they would participate in a traffic signal. The concerns about security are not warranted because it is proposed as a gated community with a fence. Regarding density, he reported that he lives on the east side of James Landing and he is not aware of any problems in the area. With regard to lighting, the applicant will meet Code. The Mayor stated that this is an upscale development with a number of concessions made by the developer; therefore, he is in favor.

The question was called. The roll call vote was:

Aye: Contreras, Walker, and Buckley

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

Motion failed.

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.

Attorney Gougelman read Resolution No. 1734 by title.

From the agenda report: This is a proposed resolution to expand the existing boundaries of the Babcock Street Redevelopment District to include an area north of Laurie Street to U. S. 1 and an area west of Airport Boulevard along NASA Boulevard. Florida Statutes require the governing body of the city to approve expansion of a community redevelopment district. Both of these areas have an inadequate transportation network and a realignment project is either being designed or considered for each area.

The resolution is the first step towards the modification. A plan amendment showing the boundary modification and project changes will subsequently be brought to the City Council for consideration. As required by statute, all taxing authorities within the county were notified of the proposed resolution.

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The expansion area study (in the agenda package) discusses the specific definition of “blight” that is required to designate a redevelopment district. One of the main criteria is “an area where there exists a faulty or inadequate street layout” which is a primary concern in both of these proposed areas. There are two necessary roadway realignment projects in the expansion areas: the North Babcock Street realignment (Phase 1 is in the district, Phase 2 will be from Laurie Street to U. S. 1) and the NASA Boulevard realignment from Airport Boulevard to Harry Sutton Road. Also, the expansion study details that the property values within these districts have also been stagnant and many of the properties have deteriorated over the years.

The Babcock Street Community Redevelopment Agency Advisory Committee discussed the proposed expansion at their July 25 and August 22 meetings, voting both times to proceed with the two expansion areas. The addition of these two areas into the redevelopment district will allow for additional public investment and promote new private investment into the areas.

Mayor Buckley opened the public hearing. There were no comments.

Moved by Hand/Contreras for approval of Resolution No. 1734.

Mrs. Poole expressed concern that this action also sanctions the development of Global Technologies. She asked who would pay the debt service. Mr. Hill replied that this action has nothing to do with debt service. Mr. Palmer agreed and said this action simply expands the redevelopment area. What happens after that is up to Council.

The question was called. Motion carried unanimously.

Council convened as the Babcock Street Community Redevelopment Agency for consideration of the next item.

21. COUNCIL ACTION RE: Discussion of payment of a brokerage fee for the sale of the former Palms 8 Theater site.

From the agenda report: The Babcock Street Community Redevelopment Agency Advisory Committee has requested that Council reconsider its previous recommendation to provide for a 6% broker commission fee for the sale of the former Palms 8 Theater property.

The committee is concerned about the downturn in the economy and the need to provide an incentive for a real estate professional to bring a buyer to the city. The committee is also concerned about the monthly interest that is being paid of approximately \$3,000. The committee’s recommendation is to follow the practice the Melbourne International Airport utilizes.

Mr. Palmer stated that the idea has merit and it may increase the flexibility of selling the property. He added that the price of the property can be elevated to cover the broker fee.

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Mrs. Hand stated that she does not want to sell the property and instead would like to see it used as a new City Hall.

Mrs. Palmer said the monthly interest being paid is lost money. Realtors would actively be involved in marketing and advertising the property while looking for a buyer.

Mrs. Poole recommended that the city consider a 4% fee. She noted that she spoke with someone who does this and the fee would be a tremendous amount of money. She questioned why we should go with 6% simply because the Airport does.

Mr. Palmer replied that we could go up to 6%.

Mr. Hill said the Airport policy involves the lease of land; the Airport does not sell land. He added that he is not sure the Airport has a guaranteed 6% that it pays. The Mayor clarified that the Airport allows 6% on all leases. Mrs. Palmer recommended that we include a fee of “up to 6%.” Mrs. Walker said the fee should be negotiable. Mr. Contreras said he would cap the fee at 4%.

Mr. Palmer’s motion to put the property up for sale with a negotiable broker fee of up to 6% did not receive a second.

Mrs. Palmer asked how we can stand firm on 4% if we let them know that we are willing to go to 6%.

Moved by Poole/C. Palmer to cap the broker fee at 4% and see how we do. Motion carried. (Vice Mayor Hand and Mayor Buckley voted nay.)

Denny Drake, Pruitt Real Estate Commercial Group, explained the marketing process and noted that the commission will most likely be shared. Six percent would be reasonable; however, if the fee is capped at 4%, a broker will take a prospective buyer to another property that pays a 6% fee.

Council reconvened as the Melbourne City Council.

22. COUNCIL ACTION: A request for City co-sponsorship for Blue Wave Certification at Paradise Beach Park.

Keep Brevard Beautiful (KBB) in partnership with the Tourist Development Council is submitting an application to become *Blue Wave* certified. Six beaches in Brevard County are eligible to receive this certification based on the water quality and other standards of environmentally sound management practices. Paradise Beach, located in Melbourne, met the criteria and KBB will be submitting the application to become certified.

The designation helps with tourist development in that travelers look for this *Blue Wave* designation when traveling the country. If Paradise Beach is selected, a kiosk, two signs and a flag that indicate the beach is a *Blue Wave* beach will be provided. Brevard County will be donating \$1,000 for this certification. Brevard County and the co-

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sponsors' names will be located at the bottom of the kiosk. We are requesting that the City of Melbourne co-sponsor by donating \$1,000.

Moved by E. Palmer/Contreras to authorize up to \$1,000 as co-sponsorship with KBB for the Blue Wave Campaign.

Mr. Palmer said the Europeans have been using the Blue Wave designation for years; it attracts tourists.

The question was called. Motion carried unanimously.

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Palmer asked the Council Members to review the e-mail distributed from County Commissioner Sue Carlson in response to Council's request for a resolution supporting the Melbourne International Airport.

Mr. Hill said that beginning with the January 22 agenda package, the information will be distributed a week in advance (January 15). The Planning and Zoning Board will be changing its meeting date to accommodate the new schedule.

Mr. Hill informed Council that the Association of Retarded Citizens (ARC) has entered into an agreement to sell their property to MIMA. He noted that the property has a reverter clause in favor of the city and he and the City Attorney have indicated to ARC that they would have to address the reverter clause issue. They have, based on an appraisal, made a \$230,000 offer for the city to release its interest in the reverter clause. The city is in the process of obtaining an appraisal to verify the value of the reverter. The information will be presented to Council and Council will need to determine if it should release, at a cost, the reversionary interest.

24. ADJOURNMENT

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

The meeting adjourned at 11:18 p.m.

City Clerk – 1/11/2002

Approved by Council _____