

Minutes

Regular Meeting before City Council

January 8, 2002

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. Pastor Edie Martinez, New Beginnings Worship Center, gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

Present:

John A. Buckley, Mayor

Loretta Isenberg-Hand, Vice Mayor, District 6

Richard Contreras, Council Member, District 1

Ed Palmer, Council Member, District 2

Pat Poole, Council Member, District 3

Grace Walker, Council Member, District 4

Cheryl Palmer, Council Member, District 5

Henry J. Hill, City Manager

Paul R. Gougelman, III, City Attorney

Bud Emerson, Assistant City Manager

Cathleen A. Wysor, City Clerk

Peggy Braz, Planning and Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented a proclamation recognizing the South Brevard Cougar Junior Midget Football Team for their Pop Warner Football National Championship win to Head Coach Jeb Stewart and the members of the team.

Mayor Buckley presented a beautification award to Craig Vinci, owner, and Steve Borelli, General Manager, for Sonic Drive-In, 4011 North Wickham Road.

Mayor Buckley reported the following: the city received a certificate from Governor Jeb Bush recognizing the City of Melbourne's participation in the Governor's Mentoring Initiative; the city received a Certificate of Appreciation from Prevent of Brevard, Inc., for support of the Prevent! services to the Brevard Community; and the city received a United States Flag in a commemorative case during the inauguration of the Carnival Pride cruise ship on January 7.

5. APPROVAL OF MINUTES – Regular Meeting – December 11, 2001

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

6. CITY MANAGER'S REPORT

Mr. Hill referenced the recent water line break on the beachside and the subsequent boil water notice that appeared in the newspaper. He stated that our employees did a terrific job ensuring the problem was isolated to the smallest possible area.

Mr. Hill said, as previously reported, the PBA members failed to ratify their contract. Staff plans to meet with PBA representatives on January 18 to attempt to bring the matter to a successful conclusion. If that is not possible, we will promptly go to impasse.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2001-62 AND SITE PLAN APPROVAL (CU-2001-11/SP-2001-06/ CAUSEWAY CENTER): (Public Hearing/Second 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) (First Reading 12/11/2001)

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

This is the second reading of an ordinance granting a conditional use for a building height of greater than 80 feet and site plan approval for an office/retail building. At the December 11, 2001 meeting, Council voted to approve the first reading of the ordinance with the understanding that the steps would be relocated and incorporated into the building. There is a draft agreement and resolution in the agenda package, which delineates how the easement could be relocated and protected consistent with Council's direction. The agreement also incorporates other representations and promises made by the developer to Council.

The agenda package also includes an analysis of drainage and traffic concerns prepared by the City Engineer and an analysis of the parking calculations prepared by the Planning and Economic Development Department.

The applicant has provided a new site plan (stamped January 2, 2002), which addresses some of the concerns voiced by Council on December 11. Another level of parking has been added without changing the height of the building. This will increase the parking by 41 spaces for a total of 241 spaces. The applicant has also provided a revised elevation showing a projection on the east and west ends of the building, including balconies.

Subsequent to the December 11 meeting, the City Attorney drafted an agreement to effectuate Council's direction at the time of first reading. In addition, the applicant submitted a revised site plan addressing certain concerns raised by Council. As a consequence, the conditions have been revised as follows (changes indicated with strike-throughs and underlines):

- 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 Avenue).
- b. The conditional use for height shall be consistent with the site plan for Causeway Center Building consisting of a ~~five~~ six sheet plan prepared by MAI Architects Engineers of Melbourne, Florida, with project number 01-089, dated 9/01/01 and ~~9/47/04~~ stamped January 2, 2002.
- c. The site plan for Causeway Center Building consisting of a six sheet plan prepared by MAI Architects Engineers of Melbourne, Florida, with project number 01-089, dated 9/01/01 and stamped January 2, 2002 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 number 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. Site plan approval is subject to ~~adoption of any ordinance releasing any public rights in the easement for the Trysting Steps and any adjacent prescriptive rights; or the Owner/Developer entering into an agreement with the City recognizing~~ waiving any claims by the City to a prescriptive easement where the Trysting Steps are currently located; releasing the old 1892 easement for the Trysting Steps and Bluff Walk (but only to the extent that the Trysting Steps/Bluff Walk easement encumbers the land owned by Hynes Properties, LLC); the Owner/Developer granting an easement (to be surveyed and legally described at the expense of the Owner/Developer) running from New Haven Avenue through the Causeway Office Center garage to Strawbridge Avenue as a memorial easement to replace the Trysting Steps easement; providing for a commemorative plaque to commemorate the Trysting Steps at both ends of the easement; granting a license to the City for free public parking in the Causeway Office Center garage during weekends (generally 9:00 a.m. to 10:00 p.m.) and for special events during off-business hours; providing for the posting of notice of same to alert the general public; granting a license to the City for limited public use of the top of the Causeway Office Center as a viewing deck during business hours (generally 9:00 a.m. to 4:00 p.m.) and for weekends and special events; and providing for notice of same to be posted to alert the public. The term "Owner/Developer" shall refer to Hynes Properties, LLC, and its successors and assigns as owners/operators of Causeway Office Center and the parking areas. ~~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 plan, 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 the issuance of a building permit for the project.~~

e. The use and plan are subject to the abandonment and vacation of a 30-foot wide utility easement bisecting the property and reconstruction of the sewer line within adjacent rights-of-way.

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 meet all applicable City Code requirements.

g. Provide a complete Environmental Impact Assessment report complying with City Code, Appendix D, Chapter 9, Article IV.

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/or retail space.

Additionally staff recommends two additional stipulations, one to address the drainage and one to address the parking.

j. Uses on this site shall not exceed the parking available on the site.

k. Provide Code-complying stormwater treatment including underground storage for the difference in runoff rates and volume between the site as an undeveloped parcel of land and as it is proposed to be constructed to the greatest extent possible.

Mrs. Braz explained that the major changes to the new site plan include an additional one-half floor of parking, which provides for 41 new parking spaces, and changes to the façade and balconies.

Attorney Gougelman referenced the letter from Attorney David Larkin who represents One Harbor Place. One Harbor Place has withdrawn one of its two objections to the project. If the ordinance is adopted, One Harbor Place has requested that condition "f" be adopted.

Continuing, Attorney Gougelman reviewed the changes to the Easement and License Agreement proposed by the owner/developer. He noted that the changes do not change the effect of the agreement with one exception. At the time the original agreement was included in the package, the owner/developer was still considering whether to indemnify the city and provide insurance to the city for public use of the parking deck, trysting steps, etc. The owner/developer has proposed a compromise, which includes removal of the indemnification provision and inclusion of the

insurance language. Mr. Gougelman said, from a legal perspective, this is a reasonable compromise.

Attorney Gougelman said if Council considers approving the ordinance, staff asks that it be done in light of the agreement. If the agreement is in acceptable form, it should be approved by resolution (draft included in the agenda package). Otherwise, the City Manager will schedule the item to return to Council. The agreement provides for the following: the city waives any claim to the prescriptive easement; any claim to the 1892 easement, trysting steps, and portion of bluff walk is vacated and waived; the owner/developer is granting to the city a memorial easement for pedestrian access only that runs up the steps, through the parking garage, across the property and over to Strawbridge Avenue; the exact location will not be known until the construction drawings are complete; there are certain rights on behalf of the public; the garage will be open and parking free during limited circumstances; the top deck of the building will be open as a public viewing deck during normal business hours; and the owner/developer will add the city to a policy to cover any claims of the public injured in the parking garage or top deck.

Mike Sweeney, Frazier Engineering, Inc., reported that he was asked by staff to evaluate the trysting steps easement. He noted that they researched the bluff area and talked to long time residents and concluded that the city has been maintaining the current steps for the past 20 years. That, along with other evidence, indicates that the easements are likely still in effect. The city probably has a prescriptive easement. He presented for the record the "Survey Report – Trysting Steps and Bluff Path between New Haven Avenue and Strawbridge Avenue", dated January 3, 2002. For the record, he stated that he is a professional licensed surveyor, licensed for 10 years in the State of Florida.

Mayor Buckley called for disclosures. Mrs. Hand said she viewed the model of the building (on display in the Council Chamber during this meeting). Mayor Buckley said he spoke with Mr. Menzel last Friday who said he was working on a model. Mrs. Walker said Mr. Menzel called and said he was working on a model and she looked at the model at this meeting. Mrs. Poole said she spoke with Weona Cleveland who said that she and Bob Gross were not able to attend this meeting because Mr. Gross is being installed as President of the Brevard County Historical Commission.

Dave Menzel, MAI, Inc., representing Dr. and Mrs. Hynes, distributed a color rendering of the proposed building. The rendering depicts how the steps will look along with the language that will be included on a commemorative plaque.

Mr. Menzel discussed the additional drawing added to the plan. An intermediate parking deck was added to the structure. When they originally designed the building, the owners desired to have large headroom in the parking area. After the concerns about parking were raised, they reviewed the plan and determined that additional spaces could be added. Forty-five spaces were added; however, two were lost to create the entrance. He noted that they now have 41 more spaces than the city calculated as the need for this project.

Mr. Menzel said the other concern discussed was that the building looked like a "box." He noted that the "box" was simply a conceptual form. Therefore, they constructed a model to show the owners how the final product may look. Balconies and other elements have been added. The building fits the site well and there is room on all sides. He concluded by saying they have tried to address all concerns while maintaining the integrity of the project.

Mrs. Hand said she does not understand how the drainage under the building will function. Mr. Menzel elaborated on the design, which will include exterior drainage structures along with an interior tank or structure. The drainage as proposed will eliminate drainage problems on this site.

Mrs. Poole asked if they will have to pump the site and how the drainage will be retained and percolate on site. Mr. Menzel described the various elevations and noted that the storage will be at a higher elevation, which will allow the water to percolate down. The excavation on site will go down an additional 2 ½ feet and the spoil on the site will have to be removed and filled with sand.

Mrs. Poole asked if the water from the retention areas will flow to the retention area on the Causeway by the county commissioner's office. Mr. Menzel said no and added that they have to design so that a certain volume is maintained on site. He explained how the tank/pond will function.

Mrs. Poole asked the measurement at the top of the buildings. She said that all three of her site plans indicate elevation 120', yet everyone has told her that it is 115'. Mr. Menzel said that is the elevation from ground zero. Following a brief discussion about measurement of height, Mr. Menzel said the Code allows you to start at the highest elevation and go up. If you started at the lower elevation, two floors would not have windows.

Mrs. Poole asked why the new site plan was not distributed at the January 3 meeting if it was finished on January 2. Mr. Hill said the new plan was distributed promptly after staff reviewed it.

Mrs. Poole discussed the differences in parking on the three site plans and stated that the newest plan should go back to the Planning and Zoning Board. Mr. Menzel replied that the Planning and

Zoning Board approved the parking as originally designed. The concern regarding parking came up during the City Council meeting. He added that many of the differences in parking noted by Mrs. Poole are the result of rounding up; therefore, the numbers were actually conservative. He stressed that the parking meets the Code requirements.

Mrs. Poole referenced stipulation "i" and pointed out that since the December 11 meeting "and/or" has been added (first floor shall remain with a restaurant and/or retail space). She noted that if the restaurant is added to the first floor, it would be leaseable area in a high hazard flood zone. Mr. Menzel said that floor is about 30' in the air – it is not at ground level. It is the first floor of the occupied space; the first floor that can be leased out.

Dr. Hynes asked why it matters where the restaurant is located. Mrs. Braz said the first occupied floor is a public floor where the general public enters. The stipulation is worded in a manner to encourage public access to the building. If they put in a restaurant and retail and in five years the restaurant doesn't make it, they should be able to put in other retail. It should not be medical and should be something for general public access.

Mrs. Palmer referenced stipulation "f" and asked if the easement for 13 spaces would be dedicated spaces. Following a brief discussion, Attorney Gary Frese, representing the applicant, said that it looks as if the parking issue with One Harbor Place will be resolved and most likely \$32,500 will be paid into the Redevelopment Parking Trust Fund. However, he noted that they have no problem indicating that the spaces are "specific" parking spaces for the exclusive use of One Harbor Place.

Mrs. Poole asked if the road along the south side that has to be vacated leads from the garage of One Harbor Place. Mr. Menzel replied no and said it is a dead-end roadway left on an old plat. It is not a road used to access parking spaces.

Mr. Gougelman clarified that the model on display has not been offered into evidence. It has a specific architecture, style, and colors; however, it is not binding. Mr. Menzel agreed and said the model was prepared as a conceptual design only. It assists in depicting how the building will mass on the site.

Mrs. Palmer asked if the conditional use for height could be used to add another floor of office space and if so, if additional parking spaces would be required to bring that floor to Code. Attorney Gougelman said the stipulations provide that a specific site plan is being approved. The Planning and Economic Development Department would have to make a determination if such a change would result in a substantial change. If Council is interested in ensuring that staff can't

approve an extra floor, that can be added as an example of a substantial change under stipulation "c."

Mrs. Palmer said since Council has been lead to believe that the additional height is for aesthetics, she would like to see the change made to stipulation "c."

Mr. Palmer recommended that a stipulation be added that the restaurant may have no more than 60 seats. Mr. Menzel said that is based on Dr. Hynes' current staff. He does not know how many employees there will be when the building is fully occupied. Mrs. Braz said if more seats are added to the restaurant, the parking ratio will change; it will be a different calculation. Mr. Palmer asked why that can't be a stipulation. Attorney Gougelman pointed out that stipulation "j" indicates that uses on the site may not exceed available parking on the site.

Discussion continued. Mrs. Braz stressed that if the restaurant changed, staff would verify that enough parking was on site to meet the increased seats.

Mrs. Poole said they could have 200 seats in the restaurant and not have to go into the lottery for alcohol (license); they could have a nightclub. She added that first Council was told this would be a cafeteria for employees and now Council is being told this is a restaurant.

Mr. Menzel said they have not defined all the spaces; that will be done in the final plan. Their intent is not to deceive, rather it is a tentative plan. This is a major facility that will be owner occupied; it is an evolving process.

Mr. Menzel confirmed for Mrs. Hand that a traffic study is currently being performed.

Mrs. Hand discussed the name "Causeway Center." Mr. Menzel said he named the building for filing purposes only. He added that he believes Dr. Hynes is open to a creative name. Mrs. Hand recommended "Hynes Trysting Medical Center." That would be keeping with the historical value of the land. Dr. Hynes said he is open to all suggestions as long as his name is not on the building. Mrs. Palmer questioned if Council is in the business of naming buildings.

Mrs. Poole asked how the parking spaces will be tracked and verified if the uses change. Mr. Menzel replied that staff keeps very good track. Mr. Hill added that staff remembered the 13 spaces for One Harbor Place.

Mrs. Walker said she would like assurance that the building will look something like the model. Mr. Menzel said he can't say exactly; however, the building will not look like the first rendering.

Mrs. Walker stated that many of her concerns have been addressed; however, her remaining concern relates to how the building will look.

Mr. Menzel clarified for Mrs. Poole that it is a five-story office tower with two and one-half parking decks.

Mayor Buckley opened the public hearing.

Gary Frese, 930 South Harbor City Boulevard, reported that the agreement is not yet final. Dr. Hynes has offered to allow limited public use of the building; however, it is a private venture, private property, office building. He has concerns about the limit on use. He added that he is sure an agreement can be reached.

Mr. Hill stated that the agreement and resolution will return to Council for final approval.

Richard Wallace, 560 Ruth, West Melbourne, said he and Mrs. Poole have known each other all their lives. He stated that he is not in favor of the proposed building and that is his own opinion. Additionally, he is not happy that the city is giving up its claim to the trysting steps easement. The steps mean something to the people of Melbourne and a good part of the history of Melbourne will be destroyed.

Dennis Meehan, 1310 E. Prospect Avenue, Chairman of the Downtown Redevelopment Committee for 21 years, discussed the efforts taken in Downtown Melbourne to make Downtown work. He stressed that the private sector and government must work together. He added that he supports the development of this building and if it is anything like the model, it will be a welcome addition.

Mrs. Poole said she is a past Vice Chairman of the Downtown Redevelopment Committee. She stated that there is a special pledge in the Code, which provides changes will not be made to the Downtown area that result in increased traffic. She added that she has no problem with the building. It is a fine idea, however, it is too big and needs to be built elsewhere or decreased in size.

Mayor Buckley informed Mrs. Poole that she just used two minutes of her time making a statement. Mrs. Poole replied that she had been tricked.

Diane Barile, 1809 Riverview Drive, said she lives in the neighborhood of the proposed building. She noted that progress is a good thing; however, her question is progress toward what vision.

She asked if the Downtown Melbourne area will eventually be like Jacksonville, Boca Raton, Miami, etc. and added that the decision and vision belong to Council. She asked if the architecture fits the Downtown Redevelopment Area and the Victorian houses on her street.

Continuing, Ms. Barile said Riverview Drive is already crowded and congested. The trysting stairs are a part of history and character of Melbourne. She noted that it will be nice to have a memorial in its place; however, a memorial is usually for something that is dead.

Ms. Barile reported that she teaches Coastal System Management and Urban Planning at Florida Tech. Her students looked at the bluffs along the Indian River Lagoon as they relate to stormwater. They found that there is groundwater seepage – so much that freshwater plants are growing into the bluff. After a storm, the seepage is considerable. She noted this will need to be investigated.

Ms. Barile concluded by saying this building is not in character with her neighborhood. She suggested Council take a hard look at the project and how it fits the town.

Mrs. Palmer asked Ms. Barile if she understands that the property can be used for this building with some configuration and height adjustments. Also, she asked if Ms. Barile feels the present empty bank building is in character with the neighborhood and One Harbor Place. Ms. Barile said it is "One Horrible Place" and now there will be a "Two Horrible Place."

In response to Mrs. Palmer, Ms. Barile said a traffic signal will not solve the traffic problem with 242 additional parking spaces. It involves the whole traffic circulation in the area.

Mayor Buckley pointed out that the increased taxes from One Harbor Place are what funded Downtown Redevelopment; that is what kept Downtown going.

Dano LoPresti, owner of the Christmas Cottage in Downtown Melbourne, stated that the proposed development is not too far from his building. He added that he believes this is something the Downtown area needs – it will increase Downtown's economic value.

Rita LoPresti, Christmas Cottage, said when they came here 16 years ago, Downtown Melbourne was pretty rough. As a member of the Downtown Redevelopment Committee, she stated they have increased the look and economic value of Downtown Melbourne. The proposed development would greet Downtown Melbourne from the Causeway; it is needed and welcomed.

Mayor Buckley reported that Harriet Martin, Melbourne Beach, phoned and said the city should acquire the property for a park. She asked that if the project is approved, that it be done in such a way that it blends in.

Attorney Gougelman referenced the following revisions to the ordinance (as a result of this meeting). He noted that these are in addition to the strike through and underlined language in the package.

Add the following example of a substantial change to condition "c": "...an additional floor of commercial or office space or an addition of greater than 2,000 s.f. of office or commercial space on the roof level, all as shown on the approved site plan."

Clarify the following in condition "f": "...or arrange for a parking easement for 13 specific parking spaces for the exclusive use of One Harbor Place,..."

Amend the effective date of the ordinance in Section 6 as follows: "That this zoning amendment shall not become effective until it has been recorded on the Official Zoning Map of the City of Melbourne and an Easement and License Agreement implementing condition "d" in Section 2. of this ordinance is approved by the Owner/Developer and the City Council. Thereafter it shall become effective in accordance with the Charter of the City of Melbourne."

Mr. Menzel and Attorney Frese agreed with the changes.

The Mayor confirmed for Mrs. Poole that the ordinance will not be effective until the Easement and License Agreement is approved. Mrs. Poole recommended the item be postponed until everything is in writing. She added that she has many questions, which have not been answered. Mrs. Poole referenced the 10' wide parking spaces and asked if gates will be installed at all four entrances. She added that 10' wide spaces are supposed to be for employee parking only.

Mrs. Braz stated that every access will have to have some kind of gate in order to qualify for the 10' spaces. Should they not qualify, they will have to redesign for 11' spaces. Mrs. Braz read from Appendix D of the City Code, Section 9.74(l) as follows:

(l) *Parking space size.* For the purpose of this article, the term off-street parking space shall apply to non-single-family or two-family units and consist of a minimum rectangular parking area measuring eleven (11) feet by twenty (20) feet exclusive of access drives and aisles. However, in those areas where parking is assigned to employees, controlled by an attendant, or controlled by

a parking gate or other physical entry and exit device, the spaces may be ten (10) feet by twenty (20) feet.

Mrs. Poole disagreed with Mrs. Braz's interpretation and asked for clarification from Attorney Gougelman. Attorney Gougelman said Mrs. Braz's interpretation is correct; however, he added that regardless of what he thinks, interpretation of this section of the Code has been delegated to the Planning and Economic Development Director.

Recessed: 9:29 p.m.

Reconvened: 9:42 p.m.

Moved by Hand/Contreras for approval of Ordinance No. 2001-62 and the site plan, with the changes read by the City Attorney in conditions "c" and "f" of Section 2 and Section 6.

Mrs. Poole made the following comments: the trysting steps and bluff walk that have been in existence for over 109 years and belong to the citizens will be demolished; petitions were signed by 343 citizens who work in and patronize Downtown Melbourne opposed to the development; four or five elected officials should not be able to vacate the easement; the proposed office tower is not compatible; to say the plan meets all the city's development requirements is wrong; the wording has been manipulated and the parking requirements are different in all three plans; the 10' wide spaces were not previously pointed out; the parking calculations are in dispute; and the building could be built on a beautiful site with trees.

Mrs. Hand stated that she feels like all her questions have been addressed. The drainage will be greatly improved and the parking requirements have improved. The Downtown area already has tall buildings – Trinity Towers East and West, One Harbor Place. The old Downtown area can live with and blend with the new architecture. The proposed building will be a nice entry to the Downtown area and this will be a great improvement over what exists on the property now.

Mrs. Palmer pointed out that the current steps are not the original trysting steps. They are concrete steps that don't lead to the bluff. They are a memorial that will be replaced by another memorial. The building will add something attractive and useful to the site. The development will also enhance our medical community. People who are feeling saddened by losing the current trysting steps memorial should start looking at historical resources they want to preserve and acquire now instead of waiting until someone approaches with a plan.

Mrs. Walker said if the building will accommodate the needs of the community and the appearance will be similar to what has been shown, then with great reluctance she can support the project.

Mr. Palmer said the proposed building is an asset for the city and will continue to improve the Downtown Redevelopment Area. He noted that the Downtown area has always had parking problems and his major concern is that there is adequate parking. A building can't be erected that will be detrimental to other parts of the redevelopment area.

Mr. Contreras thanked Dr. Hynes and Mr. Menzel for their work in addressing the concerns with this plan. He noted that this is a transition for the City of Melbourne. The current site has been abandoned and this is a significant improvement – a win/win situation. The city is benefiting with free public parking. Regarding the limited use by the public, he is interested in seeing the final language. He concluded by saying this is a worthwhile improvement and he supports the effort.

Mayor Buckley stated that if the trysting steps looked like the historical photograph, he would feel more sympathetic. He added that we are eliminating an old deserted tire store, bank and decrepit building. The development will be an improvement, so he will vote in favor of the ordinance.

The question was called.

Mrs. Poole asked if this action will result in the city's rights being abandoned. Mr. Gougelman said that would not occur until Council approves the Easement and License Agreement.

The roll call vote was:

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

Nay: Poole

Motion carried.

NEW BUSINESS

9. COUNCIL ACTION RE: Consent Agenda

Moved by E. Palmer/Hand for approval of 9 'a' through 'i' as recommended. Motion carried unanimously.

- a. Contract for sanitary sewer rehabilitation, Civil Reconstruction Services, Sanford, Florida - \$165,100.
 - b. Purchase of five Genesis Radar Units and Gemini Headline Video Systems, Decatur Electronics, Decatur, Illinois (@ \$28,125), and five Sun View Mobile Data Systems, Data 911, Summerville, South Carolina (@ \$29,425) - total cost \$57,550.
 - c. Purchase of 13 Jaguar 700P radios with emergency option, MIA-COM c/o Communications International, Inc., Vero Beach, Florida - \$23,511.
 - d. Resolution No. 1735: A proposed resolution expressing the city's intent to use bond proceeds to reimburse expenditures, which may be incurred with respect to the greens renovations and drainage improvements at the Harbor City Golf Course.
 - e. Five year Supplemental Traffic Signal Maintenance Interlocal Agreement between the city and Brevard County.
 - f. Resolution No. 1736: A proposed resolution to adopt names for private streets in the Princeton Apartments complex, located on the west side of Dairy Road north of Palm Bay Road.
 - g. Supplement No. 93 to Continuing Consultant Contract to provide survey, permitting and design services for upgrading stormwater outfalls along Charles Drive in the Almar Subdivision, Project No. 02901, Frazier Engineering, Inc., Melbourne, Florida - \$29,000.
 - h. Award of \$60,000 in SHIP funds to the South Brevard Sharing Center, Inc. for implementation of the Tenant Assistance Program and authorization for the City Manager to execute an agreement with the Sharing Center for SHIP funds.
 - i. Contract for aerial fireworks display on July 4, 2002, Zambelli Fireworks Internationale, Boca Raton, Florida - \$9,990.
10. ORDINANCE NO. 2002-01 (A&V #247): (Public Hearing/First Reading) A proposed ordinance to abandon and vacate the westerly two feet of an existing ten-foot public utility and drainage easement abutting the east property line of Lot 36, Block EE, Sherwood Park, Section B. (Requested by Geraldine L. Johnson)

Attorney Gougelman read Ordinance No. 2002-01 by title.

From the agenda report: The applicant is the executor of the estate of Edna M. Pence, deceased. The property was subsequently sold to Michael P. Guandolo who currently resides on the property at 2214 Post Road.

During the course of surveying the property for sale, it was determined that the house is located one foot into the public utility and drainage easement. We concur with the request to abandon two feet since there are no utilities in the easement. City Departments and public utilities were contacted and had no objections.

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

Moved by C. Palmer/Contreras for approval of Ordinance No. 2002-01. Motion carried unanimously.

11. ORDINANCE NO. 2002-02 (CU-2001-14/KELLY'S BAR): (Public Hearing/First Reading) A request for a conditional use to allow for the consumption of alcohol on the premises on a 1.11-acre parcel on the east side of Wickham Road, approximately one quarter mile north of Aurora Road. (Owner – Robert E. Johnson) (Applicant – Johnson Roofing and Management Group, Inc., d/b/a Kelly's Cocktail Lounge) (P&Z 12/13/2001)

Attorney Gougelman read Ordinance No. 2002-02 by title.

Ms. Braz briefed Council. The 4,788 square foot building was constructed in 1985. The site has previously been used as a restaurant and a bar. The property has an adopted land use of Commercial/Industrial and is zoned M-2 (General Industrial). The property is bound on the west by Wickham Road, on the north by an auto service center, the east by a mini-warehouse and industrial mini-warehouse/office park, and on the south by a restaurant - all zoned M-2. The property to the west across Wickham Road is zoned C-1 and is the site of the Northgate Shopping Center.

The City Code requires a conditional use for the consumption of alcohol on the premises when the use is not associated with a restaurant or hotel. The business operator needs to obtain a conditional use because the applicant is proposing to relocate his existing bar to this location. The applicant now operates Kelly's Lounge on Aurora Road east of Wickham Road. The existing bar is a grandfathered, non-conforming use. The bar also serves food but the presumed revenue from food sales is less than 50% of total sales and as a result is considered a bar and not a restaurant.

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

The Police Department has indicated that there are no serious problems associated with the current bar.

The proposed conditional use will not be injurious to the neighborhood or otherwise detrimental to the public health and welfare and will be in harmony with the general purpose of the city's zoning ordinance. The proposed bar will not adversely impact traffic patterns or conditions in the area and the number of persons working in the establishment will match the character of other businesses in the area. The site meets the separation requirements for other bars and from a church or school.

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

- a. The plan of development shall be substantially consistent with the as-built site survey for G. C. Development Corp., prepared by Fredlund and Packard Land Surveyors, Inc., of Cocoa, Florida, dated 6/14/85.
- b. The applicant shall provide Code-compliant landscaping materials (trees and shrubs).
- c. Any additional expansion of the bar by increasing the number of seats shall require the applicant to apply for an amendment to this development order.

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

Moved by Poole/E. Palmer for approval of Ordinance No. 2002-02 subject to the proposed stipulations. Motion carried unanimously.

12. ORDINANCE NOS. 2002-03, 2002-04 AND 2002-05 (AR-2001-134/CPA-2001-04/Z-2001-918): (Public Hearings/First Readings) Annexation of 1.98 acres and .44 acres of adjacent Parkway Drive right-of-way, establishment of commercial land use and the establishment of C-1 (Neighborhood Commercial) zoning, located at the southwest corner of Parkway Drive and Wickham Road. (Owner – Ed Paniccia) (Applicant - Frank Petruzello of D.S. Skilken, LLC) (Representative - Jay R. Jackson, Kimley Horn and Associates, Inc.,) (P&Z 12/13/2001)

- a. Ordinance No. 2002-03: A proposed ordinance to annex the property (AR-2001-134).

b. Ordinance No. 2002-04: A proposed ordinance to establish commercial land use on the property (CPA-2001-04)

c. Ordinance No. 2002-05: A proposed ordinance to implement C-1 zoning on the property (Z-2001-918).

Attorney Gougelman read each ordinance by title.

Ms. Braz briefed Council. The property is vacant and is zoned BU-1 (General Retail Commercial) by Brevard County. The parcel has never been subdivided or developed. The site has a Neighborhood Commercial (formerly mixed-use) land use designation by Brevard County. The property to the west is vacant and is also located in the county with Neighborhood Commercial land use and BU-1 zoning. The property to the south is developed and consists of an auto repair/tire store warehouse zoned BU-1. Parkway Drive and Wickham Road form the east and north boundaries. A convenience store (7-11) with gas pumps (zoned C-C-2) is located to the north across from Parkway Drive and the property across from Wickham Road is vacant.

The property owner is seeking the annexation in order to receive city services. A drug store/retail use is proposed for the site. Sewer service will be provided to the site by extending a sewer line located to the south. The adjacent, developed, and unincorporated parcel (tire store) is served with a septic tank. Extending sewer to this corner will make it more conducive for the remaining property owners of the unincorporated parcels to annex into the city. This would eventually allow for the elimination of an unincorporated enclave that includes the subject property and three other properties abutting the subject property.

The proposed land use is consistent with the established city land use of properties in the immediate vicinity of the site. The proposed zoning will match the zoning on the properties to the north of the site across Parkway Drive and be compatible with the county zoning on either side of the property. The proposed zoning is more restrictive than the county. The applicant has provided a conceptual site plan that indicates the proposed site layout of the proposed drug store. The site will be constructed in accordance with city land development regulations.

The Planning and Zoning Board recommended approval of AR-2001-134, CPA-2001-04, and Z-2001-918 with the findings listed in the agenda package.

Mrs. Braz confirmed for Mr. Palmer that the adjacent right-of-way is being annexed. Mr. Hill noted that we try to annex the various portions of roadway so we don't run into a jurisdictional problem.

Mrs. Palmer asked if the applicant is planning to build a drugstore whether or not the annexation occurs. Mrs. Braz said she would assume yes.

Jay Jackson, Kimley Horn and Associates, said without annexation they would have to obtain utilities another way.

Mr. Hill added that without annexation, they would have to build under a septic tank permit.

Moved by Contreras/Hand for approval of Ordinance No. 2002-03. Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2002-04. Motion carried unanimously.

Moved by Poole/E. Palmer for approval of Ordinance No. 2002-05. Motion carried unanimously.

13. COUNCIL ACTION RE: Contract to hire Public Financial Management (PFM) as the city's investment management/advisor.

Mr. Hill briefed Council. The Investment Committee has recommended hiring an investment manager to provide management and advisory services to the city and airport with regard to the investment of surplus funds. The intent is to improve investment income while preserving safety and liquidity.

The Investment Committee met with representatives from Public Financial Management (PFM). The committee also reviewed the City of Port Orange's request for proposal for investment manager services, PFM's response to this proposal and the agreement between the City of Port Orange and PFM for investment management services. PFM currently serves as Melbourne's financial advisor with regard to water and sewer bond issues. A provision in the contract offers PFM's Investment Advisory Group services.

As an example, if the city and the airport each had \$20,000,000 (\$40,000,000 total), the management fee would be \$35,000. The additional revenue generated by achieving a 0.5% increase in rate of return would be \$200,000.

Mr. Palmer asked who will pay what portion. Director of Finance Amy Elliott said the costs will be borne by the city or the airport for a pro rata share of the money invested. It would be offset against the investment income.

Mrs. Walker asked Ms. Elliott if she felt comfortable with this agreement. Ms. Elliott replied yes and noted that the city has gone a long time with passive money management. This is an opportunity to improve our investment.

Attorney Gougelman said there is no term of service in the agreement. Ms. Elliott replied that the agreement in the package is draft and a term can be incorporated into the final document.

Mayor Buckley said it should be for one year and Mr. Palmer added that it should be automatically renewable if the services work out.

Moved by Contreras/Walker that the city and airport retain Public Financial Management (PFM Asset Management LLC) to perform investment management and advisory services for investment of surplus funds and that the City Manager be authorized to execute the Investment Advisory Agreement. Motion carried unanimously.

14. COUNCIL ACTION RE: A request by the Downtown Melbourne Association for city co-sponsorship of the monthly "Friday Fest" in Downtown Melbourne.

Mr. Hill briefed Council. The Downtown Melbourne Association (DMA) has requested that the City of Melbourne continue to support the Friday Fest event held monthly in Downtown Melbourne. The DMA would like for the city to provide barricades and electrical connection for January through November 2002. The approximate cost to provide these services is \$190 per month (\$2,090 for 11 months).

Council approved a similar request in April 2001 with funding from the General Fund. If Council approves the request to co-sponsor the 2002 events, the motion should include, "...not to exceed \$2,500."

Scott Lillycrop, DMA, stated that the Friday Fest event has done very well for the DMA. After paying off all debts, it appears the DMA will carry over \$2,100 this year. He added that he believes the event is community oriented and adds value to Downtown Melbourne. He distributed a flyer, which indicates the City of Melbourne is a co-sponsor of the event.

Mrs. Poole asked what non-profit organizations the DMA contributes to. Mr. Lillycrop replied the Melbourne Area Jaycees. He noted that other groups are offered a chance to erect a booth free of charge.

Mr. Hill clarified that the city is not making a cash donation. Rather, the General Fund is absorbing the cost of services provided.

Moved by Walker/Hand to provide barricades and electrical connection for the Friday Fest through November 2002 at a cost not to exceed \$2,500. Motion carried unanimously.

15. ORDINANCE NO. 2002-06 (P&Z BOARD MEETINGS): (First Reading) A proposed ordinance to amend City Code, Article XXV, as it relates to scheduling of Planning and Zoning Board meetings.

Attorney Gougelman read Ordinance No. 2002-06 by title.

From the agenda report: This change will eliminate the requirement that the Planning and Zoning Board meet the Thursday after the regular City Council meeting. As proposed, there is no specific requirement for them to meet at a specified time. This will allow flexibility in scheduling the Planning and Zoning Board meetings.

Moved by Poole/Walker for approval of Ordinance No. 2002-06. Motion carried unanimously.

16. ORDINANCE NO. 2002-07: (First Reading) A proposed ordinance relating to the establishment of a Nuisance Abatement Board. (Approved in concept by Council 9/25/2001)

Attorney Gougelman read Ordinance No. 2002-07 by title.

From the agenda report: At the September 25, 2001 meeting, Council approved a motion by a 5:2 vote to have the City Attorney draft an ordinance establishing a Nuisance Abatement Board. Under the provisions of Florida Statutes, Section 893.138, Nuisance Abatement Boards are tasked with considering abatement of drug-related or prostitution-related public nuisances, along with any youth and street gang activities.

A Nuisance Abatement Board may take the following actions:

Declare places or premises to be "public nuisances."

Establish orders requiring the owners of the property to adopt any procedures the board deems appropriate under the circumstances to abate the nuisance. This could include the closure of part or all of the place or premise.

Seek other sanctions to produce the desired abatement, including fines or forfeiture.

In the beginning of December, Council received a draft ordinance creating a Nuisance Abatement Board. The City Attorney's Office drafted the ordinance based on the experience in other jurisdictions and in light of court cases involving such boards

Included also was an analysis provided by the City Attorney addressing policies and other procedural matters. It was requested that the ordinance be crafted with strict guidelines and a requirement that the City Council be notified before the board takes drastic action against a property. The City Attorney indicates it is not possible under the statute to require that Council be notified prior to a board action. However, Council should be kept apprised of the board actions through regular reports and agendas.

The Nuisance Abatement Board would be composed of seven members and two alternate members to be appointed by Council.

Prosecution under the Nuisance Abatement Board results from either convictions for criminal activity stemming from the property or from "substantiated incidents" being observed by police personnel.

The proposed ordinance provides that the City Attorney's Office would prosecute cases following recommendations from the Police Chief that a sufficient number of complaints have been made against a particular property. The City Clerk would serve as custodian of records and files and would generally serve as administrative support to the board.

As has been previously indicated to Council, it will not be possible to add this responsibility to the City Clerk without additional personnel. It is estimated that this may need an additional .25 clerical position (10 hours per week) which would cost approximately \$10,500 per year. Depending on the workload of the board this may need to increase to a .5 position (20 hours per week). Funding would need to be identified in the first quarter budget review.

Attorney Gougelman briefed Council. He noted that the level of criminal activity that is required by this ordinance before a case can be prosecuted is greater than what is required by the State Statute. It is not as high of a level as approved by the Supreme Court; however, he noted that he believes more likely than not it is a sufficient level to meet the test.

Regarding the recommendation to use a hearing officer, he said he does not believe that would withstand court scrutiny under the Statutes. Staff is recommending that the Statute be literally followed as far as setting up the board. Continuing, he described the level of activity required before a person can be prosecuted and the process. Once the case has been submitted to the

City Attorney's Office, it won't automatically be processed. The City Attorney would determine if there is sufficient evidence and whether the city would be able to withstand a challenge in court.

Any case before the board would be a quasi-judicial proceeding. The board could order a lien be placed against the property, similar to Code Enforcement Board liens. Alternatively, for more severe violations, the board could order all or part of a property to be closed down for an amount of time up to a year. That is where you will see a lawsuit for the uncompensated taking of private property. The concept of nuisance abatement is a very harsh remedy, but so are the circumstances leading up to that.

Continuing, Attorney Gougelman said we learned with the vehicle impoundment program that these procedures are labor intensive. Nuisance abatement will not pay for itself. The city will put out a significant amount of labor at significant costs. It should be viewed as a tool the city can use to bring criminal activities under control.

Mr. Hill added that if Council desires to create such a board, it should recognize the devotion of resources that will be required. It will not be so much Police resources, but time from the City Attorney's Office as well as staff and clerical effort. We need to identify and recognize the additional costs that will be incurred in creating a board.

Mr. Contreras questioned Council not being notified prior to board action. Attorney Gougelman said the problem with Council being advised of every single prosecution and making a decision by public vote to proceed, is that an aggrieved party will want a full blown hearing before Council. The question is how far Council wishes to go with this. If Council wishes staff to appear before Council before initiating prosecution, we can do that; however, it seems like bureaucracy.

Following a brief discussion, Mr. Gougelman said staff can certainly notify Council by memo that we are proceeding with a case.

Mr. Palmer asked for examples of how this board would work. Major Short listed former businesses that would have fallen under this ordinance. He noted that he has not had the opportunity to take the criteria from the ordinance and lay those over current locations. He can't predict where this might be used first.

Major Short agreed with Mr. Palmer that absentee landlords pose problems. They are not present and don't have to deal with the problems. They believe it is the Police Department's job. He stressed that the city has to have cooperation from property owners.

Mrs. Palmer stated that she understands the purpose of such a board. She referenced the case of a glass company located in South Melbourne that has had problems with prostitutes accosting its customers in the parking lot. The owner calls the Police Department, but it is an ongoing problem. She asked how that type of owner is protected.

Major Short said we do not want to target the cooperative property owner that has done everything within reason to correct the problem. We want to target the owner who refuses to cooperate.

Mrs. Palmer asked if there is anything in the ordinance to protect this owner. Attorney Gougelman said no, but the key to the ordinance that will make it successful is the quality of people Council appoints to the board. If you appoint people who are "tough on crime" it could turn into a kangaroo court. Mrs. Palmer replied that is the problem with not having an unbiased judge. She stressed that the ordinance needs to be objective rather than subjective.

Mr. Hill said that is exactly what happened in 1994. A number of business owners came forward and said they were trying to deal with the problems on their property. That is the real dilemma. You have to have reliance on the board members and staff.

Mrs. Palmer said she would like more objective criteria in place before the ordinance is approved. Without criteria, we will place people's livelihoods in jeopardy and place the city in jeopardy. She pointed out that we would also have to hire legal counsel for the board.

Attorney Gougelman said it would be an attorney from an outside law firm that has experience in criminal law to act as our representative. They would be compensated at our standard rate (currently \$105/hour).

Mr. Gougelman noted that there are protections in the ordinance with the process. It has to go through several hands before a case is prosecuted.

Mrs. Palmer asked if this ordinance would affect what happens inside an establishment. She added that when we send out decoys, we are actually attracting a certain element to property. In a good old boy system, there is a potential that decoys can be used to devalue and eventually take property.

Mr. Hill said taking action inside of an establishment would require a search warrant. A brief discussion followed regarding the trouble caused by pay phones on certain property and what type of action a board could take regarding those pay phones.

Mrs. Palmer asked about incidents that occur when a business is closed. Major Short stressed that we are reasonable people. Mrs. Palmer replied that she would like some of this incorporated into the ordinance.

Mr. Hill said the examples raised are the most difficult ones. The whole premise is to involve the property owner and to put them on the hook. Perhaps they need to install a fence, improve lighting, etc. The success of the board will be the public perception that the board is trying to resolve problems instead of taking away police responsibility for their share of combating crime.

Mrs. Hand said she is also concerned about innocent property owners being prosecuted. She asked for an opinion regarding the City Council serving as the Nuisance Abatement Board. Attorney Gougelman said that he seriously doubts the Statutes allow that. Council can't serve as the Code Enforcement Board. He added that Council would be looking at increased meetings if a large number of cases were brought forward.

Mrs. Hand referenced the cost – hiring an additional employee in the City Clerk's Office plus space and equipment, legal counsel, etc. If the board fails, she asked what would happen with the part time person. Mr. Hill said the position would be eliminated. In terms of outside counsel, we may not need that on an on-going basis.

Mr. Palmer stated that there are safeguards in the ordinance. There is no way an innocent business owner could be called before the board and accused. The whole thing relies on whether an owner is cooperating with the police. He noted that this is just another tool to address the problem of prostitution and drug use and it is incumbent on Council to try and abate this problem.

Mayor Buckley stated that he is opposed to the ordinance. He noted that three criminal convictions are required, which would take a great deal of time before anything could be done. Additionally, all it would take would be one mistake and the city could be faced with paying out one to two million dollars in penalties.

Moved by Poole/E. Palmer for approval of Ordinance No. 2002-07. The roll call vote was:

Aye: Contreras, E. Palmer, and Poole

Nay: Walker, C. Palmer, Hand, and Buckley

Motion failed.

17. COUNCIL ACTION RE: Board Appointments

a. Building and Construction Advisory Committee – one regular member

Moved by E. Palmer/Poole to appoint Dan Wolfe. Motion carried unanimously.

Appointed: Dan Wolfe (12/21/01 - 5/26/04; unexpired 3-year term)

b. Planning and Zoning Board - two regular members

Mayor Buckley called for nominations.

Mrs. Poole stated, "I would just like to remind Council because I said I was going to do it when this came up. When we requested the City Manager, city staff, and City Attorney that they not go ahead until we got some facts we needed, they went ahead and did it anyway. I've never known Council to do it when we've had requests and I feel like these people – we need to make some changes."

Mrs. Palmer inquired whether Mrs. Poole had a nomination. Mrs. Poole said she doesn't care who is nominated as long as we make some changes. Mrs. Hand asked why and Mrs. Poole replied for the very reason she just stated.

Mr. Contreras nominated Paul LaFleur and Mrs. Poole nominated Scott Lamb. Mr. Palmer questioned the accuracy of the attendance report for Mr. LaFleur, which indicates he was absent 8 out of 26 meetings.

The roll call vote was:

LaFleur: Contreras, Hand, and Buckley

Lamb: E. Palmer, Poole, Walker, and C. Palmer

Appointed: Scott Lamb (1/8/2002 – 12/12/2004)

Mrs. Walker stated that Mr. LaFleur had too many absences.

Mayor Buckley called for nominations for the second vacancy.

Mrs. Palmer nominated Kathy Meehan.

Moved by Hand/E. Palmer to close the nominations. Motion carried unanimously.

Moved by Hand/E. Palmer to appoint Kathy Meehan. Motion carried unanimously. (12/13/2001 – 12/12/2004)

Mrs. Poole stated that she voted for Mrs. Meehan because "she (Mrs. Meehan) was not at that meeting." (Note: Mrs. Meehan's attendance record indicated she had missed 7 out of 25 meetings.)

18. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Poole stated she would like a future agenda item regarding Trailer Haven issues. Mr. Hill asked her to forward him a written item.

19. ADJOURNMENT

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

The meeting adjourned at 11:22 p.m.