

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 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 Terry Morris, His Place Ministries, 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
	Cathleen A. Wysor	City Clerk
	Suzanne Novak	Assistant City Attorney

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented a proclamation recognizing the South Brevard Cougars Junior Midget Football Cheerleaders for the football team's National Championship in Pop Warner Football; accepted by Cindy Rosswurm, Head Coach, Assistant Coaches Melissa Reeder and Helen Simoneaux, and the South Brevard Cougars Cheerleaders.

Mayor Buckley presented the Central Florida Safety Council's "Excellence in Safety" award to Ken Gray, Risk Manager and Roosevelt Solomon, Safety Training Coordinator. The award recognizes the reduction of work related injuries in the city's safety program.

5. APPROVAL OF MINUTES - Special Meeting – January 3, 2002
- Regular Meeting – January 8, 2002

Moved by E. Palmer/Poole for approval of the January 3 special meeting minutes and January 8 regular meeting minutes. Motion carried unanimously.

6. CITY MANAGER'S REPORT

Mr. Hill referenced the memorandum requesting the addition of item 22.1 (travel request by Mrs. Poole) to the agenda.

Moved by C. Palmer/Walker to add item 22.1 to the agenda. Motion carried unanimously.

Mayor Buckley referenced AuthenTec - a local company recently honored with the 2001 Product of the Year Award for development of a fingerprint sensor. The Mayor displayed a

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

sensor, which is approximately the size of a dime.

Attorney Gougelman reported that the Florida League of Cities contacted us regarding an issue with Florida Power and Light. FP&L is seeking an amendment to the State Growth Management Act to make it easier for power utilities to obtain permits for power substations. The league has been advised by various members of the Senate and House that this will pass and that the league should negotiate on behalf of the municipalities with FP&L for the best deal possible.

Council had no objection to Attorney Gougelman working with the Florida League of Cities on suggestions and compromise language.

Mr. Gougelman confirmed for Mr. Palmer that the transmission lines are not an issue under the proposed legislation. Transmission lines have been ostensibly permitted under local government franchises. Mr. Palmer asked Attorney Gougelman to recommend in his response that the lines not be divorced from the substation.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2002-01 (A&V #247): (Public Hearing/Second Reading) A proposed ordinance to abandon and vacate the westerly two feet of an existing ten-foot public utility and drainage easement abutting the easterly property line of Lot 36, Block EE, Sherwood Park, Section B. (Requested by Geraldine L. Johnson) (First Reading 1/8/2002)

Attorney Gougelman read Ordinance No. 2002-01 by title. Mayor Buckley opened the public hearing. There were no comments.

Moved by Hand/E. Palmer for approval of Ordinance No. 2002-01. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2002-02 (CU-2001-14/KELLY'S BAR): (Public Hearing/Second Reading) An ordinance granting 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) (1/8/2002)

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

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

Moved by Poole/Hand for approval of Ordinance No. 2002-02. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NOS. 2002-03, 2002-04 AND 2002-05 (AR-2001-134/CPA-2001-04/Z-2001-918): (Public Hearings/Second Readings) Ordinances providing for the 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.,) (First Reading 1/8/2002)

Attorney Gougelman read each ordinance by title. Mayor Buckley opened the public hearing on each ordinance. There were no comments from the audience.

Moved by Contreras/Walker for approval of Ordinance No. 2002-03. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Walker/E. Palmer for approval of Ordinance No. 2002-04. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2002-05. The roll call vote was:

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

Nay: None

Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

11. ORDINANCE NO. 2002-06: (Public Hearing/Second Reading) An ordinance amending the City Code, Article XXV, as it relates to scheduling of Planning and Zoning Board meetings.

Attorney Gougelman read Ordinance No. 2002-06 by title. The Mayor opened the public hearing. There were no comments.

Moved by Walker/Poole for approval of Ordinance No. 2002-06. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Contract for FY 2001/2002 street resurfacing, Project No. 02600, Community Asphalt, Inc., Vero Beach, Florida – not to exceed \$457,022.80.

Mr. Hill reviewed the agenda report. This is a proposed contract to resurface city streets as identified and approved by Council in the budget. The work on this project includes milling certain streets and paving all streets with a one-inch layer of asphaltic concrete (blacktop). The contractor will also replace all traffic markings and the reflectors that designate fire hydrant locations.

Bids for the project were opened on January 8. The low bidder is Community Asphalt Inc., Hialeah, Florida, which has a local office in Vero Beach.

This is a unit price contract so the contractor will only be paid for the actual materials delivered and installed. Eleven streets will be milled, which involves grinding off a one-inch layer of existing asphalt pavement. Fifty-eight segments of street will be overlaid for a total of 11.16 linear miles. The total estimated tonnage is 9,270 tons of asphaltic concrete at a unit price of \$42.00 per ton.

The city's standard contract requirements will apply and the contractor will have 90 days to complete the work. The contractor will provide a schedule and sequence for paving the streets at the pre-construction conference.

Mayor Buckley expressed concern about the contractor being located in Vero Beach.

Moved by E. Palmer/Contreras for approval of the contract with Community Asphalt, Inc. in the amount not to exceed \$457,022.80. Motion carried unanimously.

13. COUNCIL ACTION RE: Approval of actions necessary for Croton Road Improvements, Project No. C98310.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

- a. Transfer of \$262,239 from Water & Sewer Miscellaneous Account to Croton Road Widening Project.
- b. Approval of contract for Croton Road Sewer Rehabilitation, Insituform Technologies, Inc., Jacksonville, FL, in the amount of \$125,935.
- c. Authorization for the City Manager to enter into an Interlocal Agreement with Brevard County for relocation of water mains as part of the Croton Road Widening Project.

From the agenda report: This is a proposal to take several actions related to relocating city utilities in Croton Road as part of Brevard County's road widening project. The first action is to transfer available cash funds into the project budget.

Brevard County has plans to four-lane Croton Road from north of Aurora Road to Lake Washington Road. The county has postponed this road project for several years due to the lack of funding. The city established a CIP to relocate or upgrade utilities as required by the new construction. This was a fiscal year 1997-1998 project with a budget of \$300,000. The project was cash funded. Most of the cash in the budget was transferred to projects that were ready to construct, and have been, but were bond funded.

The second action item is approval of the piggyback contract. The gravity sewers under the roadway are aging and deteriorated. However, video surveys indicate that the pipes are capable of being lined. This sewer lining can be accomplished independent of and before the road project. A lining contract can be piggybacked with a contract the City of St. Petersburg has with Insituform Technologies. The unit price to clean, inspect, and slip-line the 15-inch sewer is \$44.50 per linear foot. The contract amount for 2,830 feet of pipe is \$125,935.

The third action item is approval of the interlocal agreement with Brevard County for the relocation of utilities. This work can be included in the county's road construction contract. This approach has proven to be most economical on previous projects. The estimated cost of the water line work is \$175,000.

Moved by Hand/Contreras for approval to transfer \$262,239 from Water & Sewer Miscellaneous Project Account to the Croton Road Project. Motion carried unanimously.

Moved by C. Palmer/Walker for approval to piggyback the City of St. Petersburg contract with Insituform Technologies for sewer lining in the amount not to exceed \$125,935. Motion carried unanimously.

Moved by E. Palmer/Hand for approval of the interlocal agreement with Brevard County to include the water line relocation and upgrading in the road widening project.

Mrs. Hand noted that the last heavy rain flooded Croton Road. She asked if this project would take care of the problem. Mr. Hill said it would address a portion of it. He elaborated on the reasons for the most recent flooding.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

The question was called. Motion carried unanimously.

14. COUNCIL ACTION RE: Consent Agenda

Moved by E. Palmer/Hand for approval of 14 “a” through “c” as recommended.

Mrs. Palmer referenced item “a” and asked if the observation deck is a meandering deck or a static deck. Mr. Hill said the project is still in the concept phase; however, there would be an improved parking area, stabilized base for a trail, and an overlook. The trail will not be paved – it will be a nature trail.

Mrs. Palmer asked if the airport will provide security and who will provide the local match. Mr. Hill said those issues need to be resolved. He added that the airport staff proposed the project.

Mrs. Poole stated that the funding ought to be totally from the airport. She commented that this project would enhance the airport and provide for tourist development.

Mayor Buckley reported that the Airport Authority has not yet discussed this item.

Mrs. Palmer pointed out that the city would have two years to complete the project. Mr. Hill said funding would have to be provided for the first phase; several issues would need to be resolved, including funding, security, and communication with the surrounding neighborhood.

Mrs. Walker asked what would be viewed from the scenic overlook. Mr. Hill referenced two pictures in the package, which reflect natural areas. A trail would be installed around the area and the overlook would be for the surrounding environment.

Council agreed to allow a speaker.

Steve O’Neill, 3385 Ft. Sumter Street, President of the Fountainhead Homeowners’ Association, reported that the residents asked him to speak regarding concerns with the trail. The first issue relates to traffic. The new hospital on Wickham Road will add to the traffic problem and the entrance to the proposed nature trail will be on Wright Avenue. Residents are also concerned about the hours of operation, whether the entrance would be gated, whether the trail would be motorized or strictly pedestrian, lighting of the parking area, and who would ultimately provide the funding. He noted that he believes this is a beautifying effort; however, it will have an effect on Fountainhead.

Mrs. Palmer asked if the residents would also be afraid of a fire hazard. Mr. O’Neill said yes and added that during the last dry spell there were several wildfires in that area. The residents wonder if a nature trail would increase the likelihood of a fire.

Mrs. Palmer said with some tweaking, this could be a good project. She expressed concern about the uncertainties and said once the city applies for and receives grant funds, the wheels are set in motion. Mayor Buckley said this is only an application, so there is no

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

problem.

Mrs. Palmer repeated that our portion of the funding would be required in two years. Mayor Buckley said he believes this would be jointly funded between the airport and the city. He recommended Council proceed. If we receive the grant, the money can be returned if we can't use it.

Mr. Hill pointed out that there is a requirement that the city work with the neighbors. He said that clearly more work is necessary for this to be a plan. He noted that Council could consider a different matching alternative (80:20); however, points would be lost in the evaluation of the grant.

Mrs. Poole asked why the airport proposed this. Mr. Hill said they have the 39-acre conservation parcel required and they would like to offer something back to the community.

Mr. Palmer said he has talked with Mr. Johnson about this and this is an effort to do something for the neighborhood. He added that the details could be worked out; this will be a valuable asset to the city.

Moved by C. Palmer/Contreras to amend the motion to provide that item "a" will be handled with a separate motion. The vote was:

Aye: Contreras, Walker and C. Palmer

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

Motion failed.

Mr. Contreras asked if the Airport Authority could apply. Mr. Hill said this requires a resolution of the City Council; the city is the owner of the property.

Mr. Hill confirmed for Mrs. Palmer that a vote on the (main) motion would be a vote for all the consent agenda items.

The question was called on the main motion. The vote was:

Aye: E. Palmer, Poole, Hand and Buckley

Nay: Contreras, Walker and C. Palmer

Motion carried.

The consent agenda was approved as follows:

- a. Resolution No. 1737: A proposed resolution to apply to the Florida Department of Environmental Protection for the Recreation Trails Program grant for the development of a 39-acre parcel located on airport property as a parking lot and

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

nature trail.

- b. Purchase of gasoline and diesel fuel for a one-year period from Glover Oil, Melbourne, Florida (\$105,644) and Petroleum Traders Corporation, Fort Wayne, Indiana (\$321,714) for a total of \$427,358.
 - c. Approval to appropriate funds in the amount of \$14,757 for permitting assistance out of Task 6, Materials Testing Allowance (instead of Task 2) in the CH2M Hill contract for Water Treatment Plant, Phase I Project, Project No. C97371.
15. COUNCIL ACTION RE: A request by Holmes Regional Medical Center to be classified as a charitable organization and not subject to the occupational license requirements.

From the agenda report: Holmes Regional Medical Center (HRMC) has requested an exemption from the occupational license requirements on the basis that it is a charitable organization. City staff and HRMC staff have been communicating over the years about the need for an occupational license and the exemption criteria.

Prior to the change in the occupational license code, HRMC was not required to have an occupational license. This is because only "for profit" hospitals were required to have a city occupational license. When the Equity Study Commission reviewed the occupational license code, it did not recommend a distinction between "for profit" and "not for profit" entities providing the same services and charging for those services. The members felt that if an entity believed it should be classified as charitable to obtain the exemption, then a request should be made of the City Council. Council would then review the entity's charitable activities and make the determination.

Effective October 1, 1996 HRMC was subject to the occupational license requirement. The current year tax and late fees due are \$1,520.40. The total tax and late fees since October 1, 1996 are \$9,439.15.

HRMC states that it meets the criteria for exemption as a charitable institution because it is a not for profit hospital, is a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code, and provides comprehensive health care to Brevard County residents, regardless of their ability to pay. According to statements provided by the HRMC Finance Director, 5.6% of the hospital revenues fund charity care patients and 57.9% of revenues fund care not covered by Medicare, Medicaid and other sources that have limited payment levels. HRMC is exempt from property taxes.

Chapter 205, Florida Statutes defines charitable organizations as non-profit corporations operating physical facilities in the state at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.

We have a number of 501(c)(3) organizations that pay an occupational license fee for business activities where the public is charged for services provided.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

Council will need to decide if it feels HRMC can be considered a “charitable organization” for the purposes of occupational license taxes.

Bill Ellis, 8249 Devereux Drive, Vice President, Government Relations, Health First/Holmes Regional Medical Center, asked Council’s favorable consideration of classifying HRMC as a charitable institution and therefore exempt from the occupational license tax. He stated that Holmes is a not for profit corporation providing charitable services. It provides \$35 million annually in charity care, which represents 5.6% of its revenue. He stressed that he believes clearly that is a reasonable percentage.

Mr. Ellis said a question has been raised about whether other (Holmes) hospitals located in other municipalities pay an occupation license fee. He stated that the licenses in other cities are for doctors’ offices, etc. and not for the actual hospitals.

Mrs. Poole referenced the total tax and late fees due and asked what Holmes would do if a patient did not pay his/her bill. Mr. Ellis replied that service would continue to be provided.

Mr. Hill elaborated and said that the hospital has been in discussion with city staff and they agreed to disagree. He listed the occupational licenses held by Health First entities (heart institute, home care, and physicians). Additionally, Pro Health and Fitness has had an occupational license since 1997; however, the current year is delinquent.

Mr. Ellis stated that he conducted a survey and found that no other hospitals in other municipalities pay an occupational license tax.

Mayor Buckley read the memorandum from the Office of City Clerk, which indicates that Mr. Alfred Farantello phoned and stated he strongly objects to Holmes being considered a not for profit organization.

Attorney Gougelman referenced his memorandum in the package, which states that “Holmes Hospital is not exempt under Florida law.” He said that the use of the term “exemption” is a misnomer. The city can only tax whomever the Florida Legislature says we can tax. Charitable institutions are not subject to a tax; however, they are not exempt. To be exempt, an organization would have to be covered by law.

Mr. Contreras asked if the \$35 million in charity care is an average. Mr. Ellis replied that was for 2000; however, 1999 would have been very similar. Mr. Ellis added that with a downturn in the economy, he anticipates that number going up.

Mr. Contreras stated that \$35 million in one year is substantial. He added that that is a reasonable percentage to support the request.

Mr. Palmer asked if that money is considered a tax write off. Mr. Ellis said they do not pay income tax – they are exempt. Mr. Palmer responded that churches in the city are considered 501(c)(3) organizations, yet they pay an occupational license fee.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

A brief discussion followed regarding the ownership of HRMC. Mrs. Poole asked the annual revenues of HRMC. Mr. Ellis said \$625 million for 2000. Mrs. Poole replied that \$35 million is not such a large amount when compared to \$625 million in revenues.

Mrs. Poole said after having experience with the hospital, she could never consider Health First a charitable organization. She noted that those who do pay make up the costs for those who don't pay. She mentioned the cost of an aspirin as an example.

Mrs. Palmer asked if HRMC is required to provide a certain amount of charity. Mr. Ellis said not to his knowledge. He clarified that they are required to provide service to anybody who comes through their doors.

Mr. Contreras said it is a misconception to say that the entire amount of a bill goes to HRMC. Imbedded within each bill are doctors' bills, etc.

Mrs. Hand declared a conflict of interest and stated that she is a nurse at Holmes.

Mrs. Walker said her experience with the hospital tells her they are not a charitable organization. She added that she cannot support the request.

Mr. Palmer said Health First is a wonderful asset; however, he can't think of it as a charitable organization.

Moved by E. Palmer/Poole to declare that Holmes Regional Medical Center not be considered a charitable organization for the purpose of the occupational license tax. The vote was:

Aye: E. Palmer, Poole, Walker and Buckley

Nay: Contreras and C. Palmer

Abstained: Hand

Motion carried.

16. ORDINANCE NO. 2002-08: (First Reading) An ordinance amending Chapter 32, Utilities, to provide administrative authority to adjust water and sewer bills in special circumstances.

Attorney Gougelman read Ordinance No. 2002-08 by title.

Mr. Hill briefed Council. This is a proposal to provide the City Manager with authority to adjust water and sewer utility bills as he deems appropriate after careful review of the circumstances for situations that do not meet the criteria for water and sewer adjustments pursuant to Chapter 32.

Occasionally, we encounter situations where a meter registers a high reading, but there is no obvious explanation to cause the high reading and even the results of the meter test

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

are inconclusive. The City Code does not provide any authority to make an adjustment in these situations. Staff spends a significant amount of time with the customers in these situations explaining that no adjustment can be provided. Naturally, this doesn't satisfy the customer; it is an inefficient use of staff resources given the amount of the adjustment in question. The ability to grant these types of adjustments would be a small cost to provide good will to our utility customers.

Mrs. Palmer said customers have called her regarding circumstances that were beyond their control. She added that she believes the City Manager and Director of Finance should be granted the authority to look at each individual case and decide whether to reduce the bill.

Mr. Hill confirmed for Mr. Contreras that there are approximately three – five cases per month that simply can't be explained.

Mr. Palmer agreed with the ordinance and said he has occupied hours of the City Manager's time on this subject. Each request is different and the City Manager should have the flexibility. He added that the "10,000 gallons" language in the section of the Code related to adjustments to bills should also be reviewed.

Moved by E. Palmer/Poole for approval of Ordinance No. 2002-08.

Responding to Mrs. Poole, Mr. Hill said an adjustment may cross two billing periods. A brief discussion followed regarding the "10,000 gallon rule" in the Code and Mrs. Poole said that section should be addressed.

The question was called. Motion carried unanimously.

Mrs. Walker asked if this ordinance addresses the 10,000 gallons rule, for adjustments to bills, and the Mayor said that would be addressed separately.

Recessed: 8:53 p.m.
Reconvened: 9:04 p.m.

17. RESOLUTION NO. 1738: A resolution approving the Club Esteem Youth and Family Center Operation and Use Agreement between the city and the Junior League of South Brevard, Inc.

Assistant City Attorney Suzanne Novak read Resolution No. 1738 by title.

From the agenda report: The city and the Junior League of South Brevard, Inc. desire to enter into an agreement for the expansion of the Lipscomb Park Community Center. The purpose of this agreement is to set forth the terms and conditions that will govern the operation and use of the Club Esteem Youth and Family Center built by the Junior League of South Brevard, Inc.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

The League will construct a 3,000 square foot addition to Lipscomb Park Community Center for use by the Club Esteem in assisting at-risk youth in the Lipscomb Park neighborhood. The city will provide a maximum of \$50,000 in CDBG funds for the project and the League will provide funds in the amount of \$148,000 plus in-kind services. The League would also provide all furnishings for the expansion, along with funding for up to two years but no less than one year for the position of Youth Center Director. The city would provide for and pay all expenses associated with the building and custodial maintenance, property insurance and facility service for the addition.

Moved by Hand/Poole for approval of Resolution No. 1738.

Mr. Contreras asked about the city costs involved in paying for custodial maintenance, etc. Mr. Hill said Leisure Services has its own custodial staff; therefore, we do not expect an additional need for staffing.

In response to Mr. Contreras' question about the Youth Center Executive Director, Mr. Hill said the city has been very careful not to recommend anything that would cause us to pick up additional staffing. He agreed that this is a substantial commitment being undertaken by the League.

Kim Deffebach, representing the Junior League of South Brevard, stated that it would be Club Esteem's responsibility to assume funding for the director position after two years. She elaborated on the steps they are taking to ensure that this is successful and concluded by saying the League is confident that Club Esteem will be able to sustain that.

The question was called. Motion carried unanimously.

18. COUNCIL ACTION RE: Clarification of agreement with the Brevard Symphony Orchestra.

From the agenda report: Clarification on the intent of the city's in-kind donation for the use of the Auditorium by the BSO for fundraising is necessary. A question has been raised as to whether the donation was contingent upon the Orchestra's performance at the Fourth of July Celebration. The Orchestra's financial assistance request was for the in-kind donation of the Melbourne Auditorium and \$4,000 for the Fourth of July Celebration. The City Council approved the in-kind donation but did not approve the \$4,000 financial assistance request.

Mayor Buckley referenced the memorandum from the City Manager indicating that BSO has withdrawn its request. The Orchestra has contracted to perform at the July Fourth celebration in Cocoa and therefore will not be available to participate in the Front Street Park event.

Mr. Hill added that the BSO board has indicated that it would pay the Auditorium fees. In response to Mr. Contreras, Mr. Hill said the city would probably provide some of our own equipment along with some rented equipment for the Fourth of July celebration in Melbourne.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

A brief discussion followed.

Moved by Buckley/Poole to require the BSO to pay for rental of the Melbourne Auditorium. Motion carried unanimously.

19. COUNCIL ACTION RE: A request for support of variances and waivers by Habitat for Humanity.

Mr. Hill reviewed the agenda report. Habitat for Humanity has written a letter to the city indicating its intent to continue constructing Habitat homes in the Booker T. Washington area. Habitat has 17 homes completed or under construction. This includes all the Habitat homes that have ever been constructed in this area along with 11 of the 12 homes that Council endorsed in 1999. Habitat wishes to construct 17 additional homes and wants the city's support for garage variances and waiver of low mowing liens. There are several issues that need to be considered by Council regarding city policy relating to the construction of Habitat homes.

The Booker T. Washington neighborhood is a community of 75 – 85 single-family owner-occupied residential homes. Currently, 17 Habitat homes are in the neighborhood. Council should decide how many such homes the city believes are desirable for a neighborhood of that size

Habitat has taken the position that it is not willing to construct garages. They have been to the Board of Adjustment 17 times. The board members and city staff have questioned the ability to continue granting variances to the same institution for the same reason. Staff wrote in the recommendation to the Board of Adjustment for Habitat's last request that the City Council had endorsed the construction of 12 Habitat units and that after that particular variance the city was committed to supporting the waiver of the garage requirement for only one additional unit. According to this letter not one but 17 additional units are being planned.

Note that Habitat for Humanity is stating it will construct sidewalks with their homes, which is greatly needed throughout that community along with street lights.

Kim Gabriel, President, South Brevard Habitat for Humanity, distributed an updated sheet showing the history of home construction in the BTW Neighborhood. She stated that to date, 15 homes have been constructed, one home is under construction, four homes are in the pre-construction phase with variances granted, and another four homes have had variances submitted. The \$33,000 in HOME funds has been awarded to Habitat by the city. The funds will allow for the purchase of 10 additional lots in the neighborhood, which would result in a total of 34 new homes. She stressed to Council that the city's efforts are noticeable and that the accomplishments have been achieved through the efforts of over 1,000 volunteers.

Continuing, Ms. Gabriel stated that the residents in the BTW Subdivision will realize an improved quality of life because of the cooperative efforts. She asked the city to continue

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

assisting through variances and the waiver of liens on properties donated or purchased by Habitat. Additionally, Habitat has agreed to construct sidewalks for each of the remaining homes.

Ms. Gabriel concluded by saying substandard housing is being eliminated and simple, decent and affordable homes are being built for families in need.

Mrs. Poole asked what Habitat charges the homeowners. Ms. Gabriel replied \$45,000 for a three-bedroom home; that is what their monthly payment is based on. The appraised value of the home is close to \$68,000 and that is the number the taxes are based on.

Mrs. Poole asked for salary information of the Habitat staff. Ms. Gabriel said she does not have that information with her. However, she noted that Habitat has seven full time equivalents. The site supervisor makes about \$5.50 per hour and her salary is \$36,000 - \$37,000 per year. Mrs. Poole said she thought this was an all-volunteer organization. Ms. Gabriel said they use thousands of volunteer hours and without those hours, they could not accomplish what they do.

Mr. Contreras stated that he has consternation over the garage/no garage issue because he knows how valuable a garage is in terms of storage. He noted that he has looked at the area during dedications. Relative to the comment on salaries, he said he believes this is a vocation and without the Habitat folks dedicating their lives to this mission, people would not have homes. Mr. Contreras said he favors continued support of Habitat through variances and waivers of liens.

Mrs. Hand stated that she supports everything Habitat has done in the neighborhood; the neighborhood is shaping up. She added that the city should support the garage variances because she believes the sheds are working out.

Mrs. Palmer said she had qualms about the homes having variances. She drove with Ms. Gabriel through the neighborhood and the improvement to the community was evident. The smiles and greetings told her that the neighborhood embraced what Habitat is doing. The people buying homes in the Booker T. Washington area are investing in their community. Also, the screening process is extensive. She concluded by saying Habitat is doing exactly what the city envisioned happening when we decided that BTW was a blighted area. Therefore, she said she supports the variances and the forgiveness of liens.

Mayor Buckley pointed out that the BTW area was his former district as the District 1 Council Member. He stated that he has seen a tremendous difference in the past few years and he is in favor of the progress. He reported that on his street every house has a garage. Eleven people use their garage for storage and six use their garage for vehicle parking. In his opinion, a mandatory garage does not mean too much.

Mrs. Poole questioned where all the stuff would be stored if there was not a garage. Mrs. Hand replied in the storage shed.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

Mr. Palmer said that this is one of the best programs in the City of Melbourne. It is a cooperative effort that has made a tremendous difference in the neighborhood. He stated that the city should continue the waiver for garages and forgive the liens.

Mrs. Poole discussed the history of variances for garages with Habitat for Humanity. She noted that Ms. Gabriel has previously stated that garages would add an additional \$5,000 to the home. However, Mrs. Poole said she has been told that \$30 per s.f. for a garage is out of line – a garage could be built for \$10 - \$15 per s.f. Additionally, the city arranged for a \$150,000 SHIP grant for garages. Habitat refused to sign that grant unless the language regarding the garages was removed.

Continuing, Mrs. Poole said that Habitat has indicated that it is against its policy to build garages; however, a few years ago, it was against its policy to provide air conditioners. Mrs. Poole stressed that building large numbers of Habitat homes without garages in one area will stigmatize the area as being a neighborhood where poor people live. Homes for low and very low-income people should not be different; the houses should meet the requirements. Habitat builds nice homes and they should be willing to meet the minimum standards and codes of a quality city.

Mrs. Poole concluded by referencing the request for waiver of liens on properties. She asked how much more we are going to provide a special interest group.

Mr. Contreras asked if there were plans to provide sidewalks for the homes that have already been constructed. Ms. Gabriel replied no and said it would be hard to go back. Sidewalks are in the plan now and included in the effort to revitalize.

Mrs. Poole stated if Habitat can afford a sidewalk, it can afford a garage.

Moved by E. Palmer/Hand to support the contents of the letter received from Habitat for Humanity, continue the partnership with Habitat for the variances for the garages and provision of sidewalks (by Habitat), and waiver of fees if necessary.

Mrs. Poole asked if we are telling the Board of Adjustment that they must approve the variances. Attorney Gougelman replied that he does not think anyone can tell the board how to vote. Legally speaking, the board is not authorized to grant a variance unless it finds that the requirements in the Code have been satisfied. He added that Council is simply going on record to indicate its position with regard to continuation of the program. At most, it is guidance.

Mrs. Poole stated that the last time this issue appeared before Council, the City Attorney wrote a letter to the Board of Adjustment. The board interpreted the letter to mean that they were supposed to approve the variances. She stated that Council is out of order telling the board what to do.

Mr. Hill confirmed that it will be up to the board to decide on each case brought forward. Mr. Gougelman added that the applicant must provide certain facts as to how granting

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

the variance will benefit low income and very low-income individuals. Each variance application will require the applicant to provide facts on record that the application will meet the legal standards and requirements. On the most recent variances, staff has requested a requirement that the homes be maintained in the low-income housing stock for a number of years.

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

20. ORDINANCE NO. 2002-09: (First Reading) A proposed ordinance to amend Chapter 14, Garbage and Trash, as approved by the City Code Review Committee, Section 3.

Mr. Gougelman read Ordinance No. 2002-09 by title.

From the agenda report: This is an ordinance to amend Chapter 14 as approved by the City Code Review Committee, Section 3. A draft was distributed to Council a month ago. The ordinance contains the latest rates, which were adopted by City Council after the committee completed its review.

The major changes include:

Section 14-1, Definitions - amended to include additional definitions. The changes were recommended by the current Recycling Coordinator, former Recycling Coordinator, and the Code Enforcement Administrator.

Section 14-56, Property Maintenance, (a) (2) - amended to prohibit the sweeping or blowing of litter, garden, or yard trash into drainage facilities. This is an important change to the Chapter.

Section 14-57, Public Littering, (a) (1 – 6) - amended to no longer require a person distributing handbills to place his/her name on the handbill. Attorney Gougelman addressed this in his review of the Chapter. His comments are included in the agenda report.

Council needs to review the request by Dorothy Johnsen, 1809 Westwood Boulevard, Melbourne, to amend the Code to require refuse to be placed within the boundaries of the property being billed for the services. Because of the configuration of Ms. Johnsen's neighborhood, neighbors place trash in front of her home for pick up. Ms. Johnsen's letter and backup material were included in the package along with a response from the Solid Waste/Recycling staff.

Mrs. Poole referenced the issue raised by Ms. Johnsen and said there are similar problems that occur on Melbourne Avenue. She agreed that the refuse should be placed on a person's own property.

Mrs. Palmer referenced the change to Section 14-57(b) Handbills and newspapers. She questioned why the following sentence was being struck from subsection (2): "It shall be lawful for any person to hand out or distribute handbills or newspapers in any public place to

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

any person willing to accept such handbill or newspaper.”

Attorney Gougelman said his recommended changes to this section were based on the latest case law. We determined that we can prohibit placing handbills or newspapers on vehicles and in the case of subsection (3), that was stricken because it is inconsistent with Florida Statutes. He noted that he would have to review why subsection (2) was deleted.

Mrs. Palmer questioned subsection (3) being stricken. Ms. Novak noted that Chapter 316 of the Florida Statutes prohibits handing items to occupants of motor vehicles (in a roadway). This issue came up when the bucket drop ordinance was re-written.

Mr. Hill said his recollection of the change to subsection (2) is that this is free speech and the city is not going to regulate free speech. Mrs. Palmer suggested that if we are not regulating this, then the language should remain.

Mr. Palmer stated that the activity is legal. He added that it is legal to eat candy; however, we do not have to have a statement in our Code that it is legal to eat candy.

Mr. Hill said there would probably not be a problem with leaving the second sentence of subsection (2); however, Attorney Gougelman will review this prior to second reading.

Regarding the change to Section 14-56, Mrs. Hand asked how we will police the prohibition on blowing grass, clippings, etc. into the storm drains. Mr. Hill said it will be regulated on a complaint basis. We also include informational items in our stormwater brochure and other communications with the public.

Mr. Palmer asked if we can compel people who trim trees, bushes, etc. to haul their debris to the landfill rather than leaving the trimmings on the property. Mr. Hill replied that the debris can remain on the property if it meets the requirements (size, etc.); however, before second reading staff will determine if there is a way to strengthen the language.

Moved by Hand/E. Palmer for approval of Ordinance No. 2002-09.

Mr. Contreras asked about the issue raised by Ms. Johnsen. The Mayor said that should be addressed at second reading.

The question was called. Motion carried unanimously.

21. COUNCIL ACTION RE: Discussion of city parking requirements. (Requested by Council Member Poole)

From the agenda report: This item was placed on the agenda at the request of Council Member Poole. She wishes to discuss the parking requirements, particularly the provisions of 10' spaces in certain instances.

At the January 8, 2002 Council meeting, there was substantial discussion about the width of parking spaces in the proposed Causeway Center parking garage. The City Code

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

states that parking space width in the parking garage could be 10 feet, rather than the standard 11-foot width, if the garage was reserved solely for employee parking or the garage was manned by an attendant or the garage had a gated entry.

Council Member Poole believes this is inconsistent with the city's general philosophy, that unless the parking lot is used solely by employees, it should have 11-foot wide parking spaces. Mrs. Poole is requesting some amendatory language to clarify this matter.

The City Attorney provided the analysis of Code revisions, which would be necessary should Council want to make revisions. Also, Mrs. Poole distributed copies of a report prepared February 2000 by Eugene Fetner on the history of the City's 11-foot requirement.

Mrs. Poole referenced the report prepared by Mr. Fetner and noted that when Melbourne and Eau Gallie unified, Mr. Fetner was appointed to the Zoning Commission that developed the new Zoning Code for the new City of Melbourne. Work commenced over a four-year period and Ordinance No. 72-4 was eventually adopted.

Mr. Fetner's report outlines the process followed and the significant changes made to the Zoning Code. One of the most controversial items turned out to be the off street parking design requirements, specifically the minimum parking space width of 11'. He noted in his report that "developers hate it and the users love it." The development cost is a one time expense, whereas damage to vehicles utilizing the parking facilities and pedestrian safety are continuing risks to consumers long after the developers have completed their projects.

Continuing, Mrs. Poole noted that variances should only be granted for a true hardship that is unique to a single piece of property; it cannot be self-imposed. A decision by the Board of Adjustment can be a zoning change although it is applied to a single piece of property. If the justification is not unique to that piece of property, it sets a precedent for the same conditions on other property. Any change to the Zoning Ordinance should be analyzed with great care.

Mrs. Poole concluded by saying Ordinance No. 72-4 and the subsequent Zoning Ordinance No. 83-36 have served the city well. Growth since that time has been met with a sense of pride. She asked Council to close the loophole in the Code and proceed with her recommendation (as outlined by Attorney Gougelman in the agenda package).

Mrs. Hand expressed support for the 11' spaces and said she gets annoyed when the Board of Adjustment grants 10' spaces. She added that it is difficult to get out of a car in a narrow parking space. She agreed that there is also the consideration of the cost of damage to vehicles. She concluded by saying she supports the change.

Mr. Palmer said he supports the Code change.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

Mrs. Palmer asked how this would affect the Causeway Center. Attorney Gougelman said they would probably have a claim to a vested right. They met the requirements of the existing Code for 10' spaces.

Moved by Poole/Hand to adopt the proposed Code amendment (as outlined in the package). Motion carried unanimously.

22. COUNCIL ACTION RE: A request by Council Member Poole for attendance at Florida League of Cities Legislative Action Day scheduled for February 19-20, 2002 in Tallahassee.

Mr. Palmer said that as President of the Space Coast League of Cities, he should attend the conference.

Moved by Hand/Walker to authorize travel for Council Members Ed Palmer and Poole. Motion carried unanimously.

Added to the agenda:

- 22.1. COUNCIL ACTION RE: A request by Council Member Poole to attend a discussion entitled "Water Supply: Regional Challenges and Regional Solutions, Thursday, January 31, 2002 in Orlando, sponsored by Orange County.

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

23. COUNCIL ACTION RE: Board Appointments

- a. Zoning Board of Adjustment – one regular member

Mayor Buckley pointed out that this board has two alternate members and Ms. McKeever is the first alternate. Mrs. Palmer pointed out that we have an applicant with a specific background. She nominated Dale Young. Mrs. Poole nominated Jamie McKeever.

Moved by C. Palmer/Contreras to close the nominations. Motion carried unanimously.

The roll call vote was:

Young: Contreras, C. Palmer, and Buckley

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

Appointed: Jamie McKeever (1/22/2002 – 12/2/2003)

Mayor Buckley called for nominations for the alternate member vacancy (created by Jamie McKeever being appointed as a regular member).

Mrs. Palmer nominated Dale Young and Mrs. Poole nominated Clarence Rainwater.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002

Moved by Contreras/Walker to close the nominations. Motion carried unanimously.

The roll call vote was:

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

Rainwater: Poole

Appointed: Dale Young (1/22/2002 – 12/26/2004)

24. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Hill informed Council that the grand opening of the new water plant facility is scheduled for February 25.

Mrs. Palmer discussed the foul odor problems from the Sarno Road landfill/transfer facility. She noted that the complaints have increased significantly since Christmas.

Steve O'Neill, 3385 Ft. Sumter Street, President of the Fountainhead Homeowners' Association, stated that since the land has been cleared for the hospital, there has been a definite increase in odor from the landfill. He noted that on January 8 it was positively rank – the worst ever. He contacted Mr. Rodriguez at the landfill. Mr. Rodriguez met Mr. O'Neill at Sarno and Wickham Roads and agreed there was an odor. Mr. Rodriguez said he found that his staff "neglected to turn on the deodorizing system."

Mr. O'Neill said it is his understanding that the new transfer station is on hold and the county is returning with an entirely new plan. He asked Council to look at the entire issue – how the county obtained permits, the purchase of the land, etc. The permit from Council allows the operation to be moved farther east closer to the residential area.

Mr. Hill said that Commissioner Colon needs to be informed each time there is an odor problem.

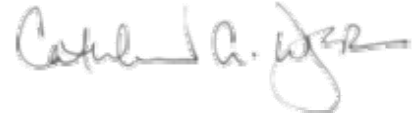
Mrs. Palmer asked for an update on the landfill issue. Mr. Hill said he will mention to Commissioner Colon that Council would like an update. He added that we have not heard anything further from the county beyond the audit that is taking place.

25. ADJOURNMENT

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

The meeting adjourned at 10:37 p.m.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 22, 2002



City Clerk – 1/30/2002

Approved by Council: _____

Attachment to official minutes: Memorandum of Voting Conflict for Vice Mayor Loretta Hand
(reference Item #15)