

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
FEBRUARY 12, 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

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley displayed the “Investor in Progress” plaque that the city received from the Economic Development Commission.

Additionally, the city received a Certificate of Appreciation from the Melbourne Light Parade for sponsorship of the 9th Annual Light Parade.

5. APPROVAL OF MINUTES - Regular Meeting – January 22, 2002

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

6. CITY MANAGER’S REPORT

Mr. Hill referenced the following information distributed to Council: draft CDBG Action Plan, copy of concept plan for Fire Station #4 prepared by the City Engineer, first quarter budget review report, update on the health/life insurance renewal, and update on the PBA negotiations. Additionally, the City Attorney distributed a report regarding a lawsuit that will be filed on the approval of the Causeway Center project.

Mr. Hill announced that Senator Bill Nelson will be conducting a town meeting in the Council Chamber on Monday, February 18, 4:30 p.m. – 6:30 p.m. Mayor and Council are invited to attend.

Mayor Buckley referenced his request to add Resolution No. 1745 to the agenda.

Moved by Walker/Contreras to add Resolution No. 1745 to the agenda as item 10 “h”.

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Motion carried unanimously.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2002-08: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 32, Utilities, to provide administrative authority to adjust water and sewer bills in special circumstances. (Requested by City of Melbourne) (First Reading 1/22/2002)

Attorney Gougelman read Ordinance No. 2002-08 by title. There were no comments from the public.

Moved by Contreras/C. Palmer for approval of Ordinance No. 2002-08. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2002-09: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 14, Garbage and Trash, as approved by the City Code Review Committee, Section 3. (First Reading 1/22/2002)

Mr. Gougelman read the ordinance by title.

Mayor Buckley referenced the additional information provided by Dorothy Johnsen to illustrate the difficulties she is having with neighbors placing trash on her property. The Mayor added that the ordinance has been amended to address Ms. Johnsen's concerns.

Mr. Hill said in addition to that change language was restored in Section 14-57(b), which states it is lawful to distribute handbills in public places. Also, at the last meeting Council asked if language could be added to strengthen the requirements for removal of tree trimmings from property. He said staff suggested language but did not include it in the ordinance. There is some benefit that would come by being more direct; however, it could add significantly to the cost of tree trimming services.

Moved by E. Palmer/Poole for approval of Ordinance No. 2002-09 as written. The roll call vote was:

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

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Nay: None

Motion carried unanimously.

NEW BUSINESS

10. COUNCIL ACTION RE: Consent Agenda

Moved by Hand/Walker for approval of items 10 “a” through “h” as recommended.

Mr. Hill will provide information to Council Member E. Palmer regarding the type of chemicals being sprayed by the Mosquito Control District (item “g”).

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Resolution No. 1739: A proposed resolution to authorize application to the Florida Department of Community Affairs for the 2002-2003 Emergency Management Preparedness and Assistance Trust Fund for grant funding in the amount of \$19,000 for a 12' x 12' building to house the generator at the Public Works Complex.
- b. Resolution No. 1740: A proposed resolution to authorize application to the Department of Justice for 2002-2003 funding for a one year continuation of the contractual “victim advocate” position at the Melbourne Police Department.
- c. Resolution No. 1741: A proposed resolution amending Resolution No. 1730 to revise the reinstatement date for participation in the Florida Retirement System for all elected positions taking office on or after November 10, 1998.
- d. Purchase of 11 replacement vehicles for Fleet Management, various vendors - \$246,916.
- e. Contract for annual auctioneer services, George Gideon Auctioneers, Zellwood, FL at 6.37% of gross auction proceeds.
- f. Contract for diesel engine generator service, Zabatt, Inc., Jacksonville, FL - \$43,375.
- g. A request from the Brevard Mosquito Control District for permission to spray from aircraft to combat the spread of St. Louis encephalitis.

Added to the agenda:

- h. Resolution No. 1745: A proposed resolution relating to congressional district reapportionment, requesting that the Florida Legislature maintain all of Brevard County in one congressional district.

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11. COUNCIL ACTION RE: Discussion of expiration of the lease between Land Yacht Port O' Call and the Melbourne Airport Authority. (Requested by Board of Directors, Land Yacht Port O' Call)

From the agenda report: This is a request by the President of the Land Yacht Port O'Call Board of Directors to address Council regarding the expiration (April 2004) of the Port O' Call lease. Residents of the mobile home park desire consideration of continuation of the lease with the Melbourne Airport Authority. They state they have attempted to contact the Director of Aviation and Melbourne Airport Authority without success and they want to address Council to enlist your aid.

John Fuller, 1300 South Airport Boulevard, reported that the residents of Port O'Call do not place a demand on city services and the school board budget; they conserve water; they have shown their patriotism since the park's inception 30 years ago; over 50% of the population served in the military; most of the residents are retired on pensions from the 1970's and 1980's with social security of less than \$100 per month; residents have church affiliations, use local doctors, frequent retail stores and automobile agencies; and the rent paid is comparable to or above other private parks in South Brevard. He stressed that it is time for Council to step forward. The City of Melbourne has done a lot of damage to Port O'Call in the past 18 months. They have lost 28% of their residents since the news broke about the lease. He concluded by saying they need a long-term lease of five years or more.

Don Shafer, 1300 Airport Boulevard, discussed the history of the park and the residents. The residents are part of the volunteerism that exists in the city – they pick up litter on Airport Boulevard and volunteer at the hospital, Sharing Center, Daily Bread, etc. Many of the people have liked our area so much that they have settled and become residents of the city. He concluded by saying that in 1994 the city praised the park on its 25th anniversary. He asked what happened since that time.

Gordon Vaught, 1300 Airport Boulevard, said he has been a leaseholder for the past six years. He noted that he conducted his own survey about how much money the residents bring to our area during the winter months. He has kept accurate records over the past five years and noted that he used 600 as the occupancy rate of the park. Although the biggest unknown is money spent at Holmes Regional, local rehabilitation centers, and doctors, he has determined that Port O'Call residents bring \$11.5 million during the winter season. He stressed that no one knows what the economy is going to do and a bird in the hand is worth two in the bush. He asked that Council consider keeping Port O'Call open.

Robert Bakey, 847 Chickasaw Avenue, representing Publix Supermarkets, stated that many of his customers are from Port O'Call. He added that this area of Melbourne is in need of families; families support a broader range of businesses. He is concerned about any loss of residents, whether seasonal or not, and he would like to see the residential growth continue.

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Virginia L. High, 1300 Airport Boulevard, President of the Board of Directors, Land Yacht Port O'Call, said she has been a winter resident for 12 years and a widow for eight of those years. Ms. High reported on a conversation she had with Mr. Johnson and Mr. Ennis (Melbourne International Airport) in 2001. At that time, the park was told that the Airport was not receiving the fair market value for the property; however, no amount was mentioned. It was inferred that the residents could not afford this property.

Ms. High asked why the residents were not informed about the "underpayment" for the property long ago. When the article appeared in the newspaper, there was panic and they lost many of their long-term leaseholders. All plans for improvements are at a complete standstill. She questioned why they were not given consideration for making a determination as to whether they could afford the property. She stressed that they have put 33 years of effort and financial backing into the park. Ms. High requested that the Airport Authority and the City Council grant Port O'Call the opportunity to decide what it can and cannot afford. They are ready to negotiate.

Mayor Buckley asked why they have never applied to speak before the Airport Authority. Ms. High replied that they have tried. Mayor Buckley said the Authority holds a meeting every month. Ms. High said Mr. Johnson is generally not available when they call. She added that she understands that; however, they have tried several times for a response. Finally she sent certified letters because so often they are told that correspondence was not received.

Mayor Buckley said he spoke to Ms. High on February 26, 2001 – long before the Global Technologies lease was signed. He added that he has always been available and willing to speak to the residents of the park.

Philip G. Azeredo, 1957 Pineapple Avenue, said he has been an "airstreamer" for 22 years. He said that Global Technologies is a mystery. The city staff said that it is some sort of holding company. He said something this nebulous concerns him. The Port O'Call residents have paid rent for 30 years. He has spent \$2,000 on tires in the past six months, so he knows that other people have spent a lot of money in the community. Mr. Azeredo said he would like to give his home to his daughter and move to Port O'Call.

Mayor Buckley asked the Airport Director to explain why the decision was made not to renew the Port O'Call lease.

Jim Johnson, Director of Aviation, stated that in December 1999 a meeting was held with Port O'Call representatives and Richard Ennis from the Airport. Port O'Call was informed at that time that the lease would not be renewed on a long-term basis. He read from a letter.

Mayor Buckley explained that the Airport Authority, which includes three members of the City Council, made a business decision that this property was more valuable as commercial. The decision was made not to extend the lease. Since that time, Global Technologies – a holding group – was given an option to lease after 2004. That option is

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a contract. Continuing, the Mayor noted that the Airport Authority should consider this issue; this is an Airport function.

Mr. Johnson briefly addressed the sequence of events and various dates involved with the option to lease.

Mrs. Poole referenced the Global Technologies option and questioned if Global asked to delay the option payment. Mr. Johnson said yes and noted that the first option was delayed because of the recession and the September 11 attack. The Airport Authority granted the extension. Mrs. Poole said the delay is not a good sign. Mr. Johnson replied that he is confident there will be one building and perhaps two constructed this year by Global Technologies.

Mrs. Walker asked for additional information about Global Technologies. Mr. Johnson said it is a group of developers from Vero Beach that wants to build high tech office space on the Airport. The company is comprised of two brokers and a contractor who are quite capable of constructing the properties.

Mrs. Palmer asked if we are tied up in this contract and unable to negotiate with Port O'Call to allow them to meet the requested amount of money. Mr. Johnson stated that we are not in a position to negotiate with Port O'Call. The option to lease puts us in a binding contract with Global Technologies. We are legally, ethically, and morally bound to the contract just like we are with the Port O'Call contract that expires in April 2004.

Mrs. Walker asked Mr. Johnson if he is saying that we can't negotiate. Mr. Johnson replied that we have a legal document that says the land is optioned to Global Technologies. If we decided to do different, we would be sued. Mrs. Walker noted that the city gets sued frequently and we negotiate. She added that she is not saying that is what the Authority needs to do – but it can be done.

Mr. Johnson said there is an opportunity for Port O'Call to appear before the Airport Authority if that is what they would like to do. A brief discussion followed regarding where and when meetings are held.

By consensus, Council agreed to grant Mrs. Poole more than 10 minutes to speak.

Mrs. Poole discussed the history of Land Yacht Port O'Call and said it was an inconsiderate, arrogant way to notify residents via a September 2000 newspaper article that the lease would not be renewed. She noted that a good percentage of widows and widowers call Port O'Call home. She questioned why they were not given right of first refusal and are now being told that the property is far too valuable for them.

Mrs. Poole referenced the option that was given to Global Technologies and said that Mr. Johnson alluded to big money with that option. She questioned if \$24,500 for a 16-month option is big money. Additionally, the option payment that is due has been delayed until March.

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Mrs. Poole quoted from several of the letters sent to Council by Port O'Call residents. She stated that the Melbourne International Airport belongs to the City of Melbourne. Three members from City Council sit on the Authority who do not owe an allegiance to the Authority. A proposal of this magnitude should never have been made without City Council involvement and public hearings. The Airport Authority is there to manage the Airport – not make decisions for the city.

Continuing, Mrs. Poole stated that she does not believe that FAA or the powers referred to by the Airport Director require the Airport to get the highest price for leases when the Airport gives tax abatements and other amenities to encourage development. The Airport has no compassion for Trailer Haven and Port O'Call – they are causing anxiety and trauma for our senior citizens. She concluded by saying there is nothing that cannot be changed.

Mayor Buckley pointed out that it is not true that the first notice the residents received was via a newspaper article. He reported that he personally spoke to the previous President of Port O'Call and informed him that the Airport would not extend the lease beyond 2004. However, if we did not have anyone who wanted the property, the Airport would consider extending the lease on a year to year basis.

Mrs. Walker stated that before making any kind of decision the affect that it will have needs to be determined. She added that she feels that this decision was not handled like it should have been.

Mr. Palmer said there is no question about the contributions the residents of Port O'Call have made to the City of Melbourne. He added that the Charter has given the Airport Authority the means to manage the Airport and surrounding property. Therefore, this decision should return to the Airport Authority. Once a decision is made there, it should return to the City Council.

In response to Mr. Palmer, Attorney Gougelman agreed that the matter should go to the Airport Authority first.

Mrs. Poole reported that she spoke with Jackson Vaughn who was the City Attorney when the Airport Authority was formed. He wrote the documents, which formed the Airport Authority. She noted that he has said that the Airport Authority serves at the will of the city; the City Council has the final say.

Mrs. Poole stated that City Council needs to inform the Airport Authority about the number of people in attendance at this meeting, what transpired, and that the issue should be reviewed. Additionally, the residents should be given an opportunity to speak before the Authority. Following a brief discussion, the Mayor said he would send a letter to the Airport Authority.

12. COUNCIL ACTION RE: Discussion of Trailer Haven concerns. (Requested by Council Member Poole)

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Judith Wargo, 722 Manston Drive, representing Trailer Haven, said that Trailer Haven is unique; the Property Appraiser considers it as a low rent housing area. No other trailer park in this area is considered low rent; therefore, comparing Trailer Haven with other mobile home parks is like comparing apples to oranges.

Ms. Wargo said she used voter registration information to determine that 49% of the residents in Trailer Haven are Florida registered voters. This shows that it is not a part time community. Continuing with the voter statistics, she said that Trailer Haven has quite a voter block. They have a volunteer force and are considered an economic stronghold for local businesses.

Ms. Wargo noted that the residents pay taxes to the county and taxes on utilities. The average age of each resident is 72. Many receive very little social security with no other source of income. Trailer Haven has an anonymous fund in order to help the residents who have difficulty paying rent, utilities, etc. Several disbursements have been made this year.

Earl Harper, President of AARP Chapter 219, said that the land in Trailer Haven was set aside for military retirees. He added that he sees the taxes being (imposed) in a round about way through an increase in rent. He cautioned that the people in Trailer Haven and Port O'Call vote and they will be voting en masse; therefore, Council had better listen.

Mr. Palmer asked Mr. Harper if he is saying that the rent is too high. Mr. Harper replied that (taxes) were shoved on the residents a different way through a rent increase.

(For information: City Council discussed placing Trailer Haven on the tax rolls in January/February 2001.)

Mr. Contreras asked if the land was deeded to military retirees. Mr. Gougelman replied not to his knowledge.

Paul Kreft, 626 W. Moffatt Place, Trailer Haven, reported that until six years ago, the city would handle calls regarding blocked sewers. For some reason, that is not the case anymore. He referenced a 1986 booklet entitled "Prospectus for Trailer Haven Mobile Park." The booklet notes that Trailer Haven is owned by the City of Melbourne; the city is responsible for sewer lines up to the lot; and residents are responsible for lines from the meter to the home. He added that the residents accept responsibility for problems between the meter and the home.

Continuing, Mr. Kreft referenced a letter (from the Airport Authority) dated December 19, 2001, which indicates that the city has informed the Airport that it will no longer be responsible for sewer mains less than eight inches in diameter. He added that the letter also lays the groundwork for a rent increase in 2002.

Mrs. Poole said that this problem has affected several widows. They were told they would have to hire a plumber and have had bills of \$300 and \$400. She added that if

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there is a problem with the main line, it should be taken care of by the city. This needs to be straightened out.

Mrs. Poole referenced the information distributed to Council about the Trailer Haven rent increase justification (distributed by Dave Hall prior to the meeting). She said Council needs to investigate how it can help these people.

Mr. Kreft clarified for Mr. Palmer that the city is no longer taking care of the sewer line that goes from the meter out under the pavement. That is the line the city used to service. Mr. Palmer said that Council will look into the matter.

Mrs. Palmer referenced the notice to residents outlining the rent increase. She said the reason for the increase relates to the stormwater assessment and ambulance fee. These are fees that every resident in the county has to pay. Mrs. Palmer added that Council has been looking out for Trailer Haven residents. Council decided that the park would remain low-income housing and not be subject to ad valorem taxes. Regarding the sewer problems mentioned, she stated that she would like for the city to continue taking care of any problems previously taken care of.

In response to Mr. Contreras, Mr. Harper said he would look for any evidence that shows the land was deeded to military retirees and provide it to the city.

Mr. Hill said one speaker indicated that the stormwater assessment was a “sneaky way to impose a tax” when in fact the assessment is levied against the Airport Authority. The Authority has decided to pass that amount on to the individual lots. That is an issue that has to be taken up with the Authority.

Regarding the sewer lines, Mr. Hill said he is not sure what has changed. It is a situation where a number of the lines are less than eight inches. In some instances, they have been maintained by the city and in other instances, they have been maintained by the Airport Authority. He added that when the issue first surfaced and allegations were made that individual lot owners were being charged, he asked for names, details, etc. So far he has not been provided with any information.

In the meantime, city staff has been working with airport staff to create a comprehensive map of the lines, including who installed the lines. In some cases, the responsibility is clear but in other cases, lines go under trailers, there are no easements, etc. He added that staff would continue working on the map and will work with the Airport Authority to determine maintenance responsibility.

Mrs. Palmer asked if there is a timeline for the map to be complete. Mr. Hill said it has not been a priority. However, we have asked the Airport Authority to notify us if a problem exists. As far as we know, no reports have been made to the park management about someone having to pay a large fee for lines that may be the airport or city’s responsibility.

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In response to Mrs. Palmer, Dave Hall, Trailer Haven Manager, said the two instances reported by Mr. Kreft were investigated. In both instances, the blockage occurred on the tenants' property within their property line. The blockages were the result of shrubbery that the tenants planted over the lines.

Mrs. Palmer asked Mr. Hall how long he has been manager. Mr. Hall replied seven years in May. Mrs. Palmer asked if during that time there has been any change in the procedure for taking care of blockages and Mr. Hall replied no.

A brief discussion followed. Mr. Hill said staff will continue to work on the map. We need to have a clear idea of the location of the lines because the city would be assuming a substantial responsibility and burden if they are clay lines. Mrs. Poole said we can't wait until sewer comes up through the roads and streets. Mr. Hill said that is not what is being suggested. The city and the airport will work together if an emergency occurs. Mr. Palmer added that the Airport Authority will check into this to determine the problem. The issue will be addressed.

Recessed: 9:29 p.m.
Reconvened: 9:39 p.m.

13. ORDINANCE NOS. 2002-10, 2002-11 AND 2002-12 (AR-2001-135/CPA-2001-05/Z-2001-919/PDQ PIZZA): (Public Hearings/First Readings) Request for annexation, establishment of Commercial/Medium Density Residential land use and establishment of C-1 (Neighborhood Commercial) zoning on a 0.75-acre lot, located on the northeast corner of Aurora Road and Lansing Street. (Owner/Applicant – P.D.Q. Pizza, Inc.) (Representative - Vaheed B. Teimouri) (P&Z 1/17/2002)
- a. Ordinance No. 2002-10: A proposed ordinance to annex the property (AR-2001-135).
 - b. Ordinance No. 2002-11: A proposed ordinance to establish a Commercial/Medium Density Resident land use (CPA-2001-05).
 - c. Ordinance No. 2002-12: A proposed ordinance to establish C-1 (Neighborhood Commercial) zoning on the property (Z-2001-919).

Attorney Gougelman read each ordinance by title.

Ms. Braz briefed Council. The vacant property is part of the Wilson Gardens Subdivision and has never been developed. She explained the surrounding zoning. The property owner is seeking the annexation in order to receive city services. A pizza restaurant/store is proposed for the site. Sewer service will be provided to the site by extending a sewer line located to the west.

The land use advertised is Commercial. The actual requested land use is Commercial/Medium Density Residential and is less intensive than the advertised land use. The requested Commercial/Medium Density Residential land use will match the advisory land

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use established for this property in the Comprehensive Plan. The existing Brevard County designated land use is Neighborhood Commercial, which is very similar to the city's advisory land use.

The proposed C-1 zoning is consistent with the established city zonings along Aurora Road and other properties in the immediate vicinity of the site. The proposed zoning will match the zoning on the properties to the west of the site across Lansing Street and the county zonings on either side of the property. The proposed zoning is slightly more restrictive than the county zoning.

The Planning and Zoning Board recommended approval of AR-2001-135, CPA-2001-05, and Z-2001-919 with the findings listed in the agenda package.

Mayor Buckley opened the public hearing on each ordinance. There were no comments.

Moved by C. Palmer/Hand for approval of Ordinance 2002-10. Motion carried unanimously.

Moved by E. Palmer/C. Palmer for approval of Ordinance 2002-11. Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance 2002-12. Motion carried unanimously.

14. ORDINANCE NO. 2002-13 (CU-2001-15/SP-2001-12/STORAGE DEPOT PHASE 2): (Public Hearing/First Reading) A request for a conditional use for a mini-storage building in a C-P (Commercial Parkway) zoning district, located on the south side of East Eau Gallie Boulevard, east of Riverside Drive and west of Unity Drive on a 0.99-acre portion of a commercial lot and site. (Owners/Applicants – Storage Depot Phase 2/James Kaufman) (Representative – Richard Kern) (P&Z 1/17/2002)

Mr. Gougelman read Ordinance No. 2002-13 by title.

Ms. Braz reviewed the agenda report. The property was originally part of the old Aspinwall Subdivision. The front portion of the property is developed as two restaurants. The rear portion of the property is vacant; however, a site plan was approved by Council on September 27, 2000 (SP-2000-04) for a three-story, 86 room hotel and three-story, 18,000 square foot office building. The hotel and office building have not been constructed.

Mrs. Braz discussed the zoning on this property and the surrounding zoning. The applicant proposes to develop a three-story, 39,744 square foot mini-storage facility.

The previously approved plan included a condition that required the owner to make improvements/modifications to the private street to the west of the site. This provision should be retained. The subdivision to the south is now being developed and the street connection will soon be provided. At the time that the subdivision is completed the private street extending northward to Eau Gallie Boulevard will need to be improved. This

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essentially will mean that the perpendicular on street parking would need to be changed to parallel parking and drainage and sidewalk improvements provided. The applicant has an agreement with the property owner to the south. The agreement spells out how the easement property will be improved and by whom. Under the proposed condition the applicant shall be required to coordinate with the property owner to the south to make the improvements to the private street. It is important to the overall traffic circulation in the area that this street be constructed as it ties all of the residential and commercial development on the beachside together and distributes/disperses traffic on the area roadway network.

The Planning and Zoning Board recommended approval of CU-2001-15 with the findings contained in the package and the following conditions:

- a. The conditional use and the proposed plan of development shall be consistent with the one-page site plan (SP-2001-12) for Storage Depot USA Phase 2, prepared by R.K. Engineering, Inc., of Melbourne, Florida, dated January 9, 2002.
- b. Any change to the site plan will require reevaluation of the site plan by the City Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: a) a decrease of 5% of the open space or vegetative areas on site; b) any increase in the number of access points shown on the site plan; c) a change which would reduce the landscape buffer along the easterly portion of the site; or d) any increase in the size, height or dimensions of the storage unit building.

- c. Storage units only shall be accessible by a central interior building corridor and no rental unit shall be directly accessible from the outside of the building.
- d. The owner/applicant or successors shall participate with the developer(s) of the residential and commercial property to the south to reconstruct the roadway easement property, consistent with the agreement dated March 25, 1985, into a street complying with city design requirements at the time that the street connection from the subdivision to the south is completed.
- e. Provide an opaque fence or wall along the total length of the east property line and place each of the five-ton air conditioning units behind an opaque fence at least three feet in height. No air conditioning units shall be placed on the roof of the building. In addition to the opaque barrier, trees capable of growing up to 40 feet in height, planted 10 feet on center, shall be planted along the east property line.

Staff believes that stipulation “d” should be revised to assure compliance with the construction of the street. The new revised stipulation should read:

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- d. Enter into an agreement acceptable to the City Manager and the City Attorney which provides for the construction of a Code-complying street connecting Eau Gallie Boulevard to the subdivision to the south at the time the subdivision to the south is completed.

Mr. Palmer asked the timing of stipulation “d.” Mrs. Braz said it is her understanding that in about a year there will be a road on the south side, at which time the applicant can make it a connecting road. A private agreement exists now, but the city is not a party to that agreement.

James Kaufman, applicant, said he has a problem with the roadway stipulation. He added that this was discussed at great length with the Planning and Zoning Board. He noted that he does not need this roadway and does not want it. He has agreed to give the development to the south an easement to the roadway. They will build the roadway and he will contribute \$50,000 towards the cost.

Mr. Kaufman added that the stipulation will force the roadway. If that stipulation is placed on him, he will have to fund a \$300,000 roadway for a \$600,000 building and that just isn't going to happen. He stressed that they have a recorded agreement in place with the property owners behind them.

Mrs. Palmer asked why the applicant is being asked to do more. Hr. Hill said the intent is to ensure that they follow through with the agreement; the stipulation is worded broadly. Perhaps different language is needed to tie the roadway to the existing agreement. Mrs. Palmer said she would like to see this go back on the developer (to the south). Mr. Kaufman has already provided an easement and has stated he will contribute money. The roadway should not be put on his back.

Mr. Contreras agreed that stipulation “d” is unacceptable. The subdivision and burden of putting in the roadway should be on Cochran or whomever he sold the property to. There is already a legally binding agreement between Mr. Kaufman and the developer to the south. The city's only responsibility is to ensure that the roadway is constructed when they develop the subdivision.

Attorney Gougelman said staff is concerned that there needs to be access and there are only three parties that can build that access – Kaufman, the developer to the south, and the city. The developer to the south and Kaufman could agree to terminate that agreement at any time. He added that he does not believe the intent of the stipulation is to require Kaufman to build the roadway. He added that stipulation “d” needs to be refined prior to second reading.

Moved by Poole/Hand for approval of Ordinance No. 2002-13 on first reading with direction to the City Attorney to revise the wording of stipulation “d” so that it will be acceptable to the city and Mr. Kaufman. Motion carried unanimously.

15. ORDINANCE NO. 2002-14 (CU-2001-16/SP-2001-11/WATER WHIRLED CAR WASH):
(Public Hearing/First Reading) A request for a conditional use for a car wash on property

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in a C-C-2 (General Commercial) zoning district with a conditional use for an automotive service station, located on the southeast corner of New Haven Avenue and Babcock Street on four lots totaling 0.63 acres. (Owner – Rossetter Trust c/o William C. Potter) (Applicant – Micah Savell) (Representative – Richard Kern) (1/17/2002)

The City Attorney read the ordinance by title. Ms. Braz briefed Council. The property is part of the Palm Gardens Subdivision. The site was developed as a service station many years ago. The service station has been closed for several years and the site has remained vacant. The applicant was successful in having the property rezoned and obtained a conditional use for an automotive service station in December 1998. As a condition of the conditional use approval for the service station the applicant had to acquire variances for lot area and pump setbacks. These variances were granted in 1999 (V-99-007).

Mrs. Braz discussed the zoning, surrounding zoning, and the Code requirements. The applicant proposes to convert the existing gas station building into an office use with accessory storage and to construct an enclosed two bay automatic car wash on the north side of the existing building. Since approval of the previous conditional use and site plan, The Babcock Street (SR 507) Preliminary Development and Environmental (PD&E) Study has been completed by the FDOT for the proposed Babcock Street widening. The results of this study indicate that 69.5 feet of right-of-way from the present centerline of Babcock Street will be needed to construct the recommended and approved alignment. This means that the westerly 30.5 feet of the property will be taken for the widening. The City Comprehensive Plan Transportation Element, Table T-10 indicates that for a six-lane highway, 65 feet of right-of-way measured from the centerline would be needed. This is close to what was identified in the PD&E study. As required by this policy no building should be permitted within this required setback.

One Planning and Zoning Board member expressed concern with the positioning of the proposed car wash bays because they may pose a problem in the future with the efficient operation of the site when the road widening takes place. The concern is that the location of the wash bays may create a problem by increasing the cost of acquiring the property for roadway widening and the width of the drive aisles would require one-way traffic flow. The board member proposed to reposition the wash bays to reduce future impacts on the site and make the site more operationally efficient. The applicant expressed opposition to this proposal because it may require a variance. After the roadway taking, variances may be needed for this site anyhow. The Board also recommended removing a vacuum and parking space at the northwest corner of the site to improve on site traffic circulation.

The applicant proposes to provide a six foot high white PVC fence along the south and east boundary of the site to meet City Code requirements. The landscape standards for this use will ensure that there is a heavy vegetative buffer along the property lines. The state has listed the property as a Superfund site in need of cleanup from the contaminants. This should be accomplished as part of the development project. The applicant expressed concern about having to provide the cleanup since this is considered to be a low priority Superfund site and that Chevron was permitted to discontinue monitoring the wells on the property.

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

- a. The conditional use and the proposed plan of development shall be consistent with the one-page site plan (SP-2001-11) for Water Whirled Car Wash, prepared by R.K. Engineering, Inc., of Melbourne, Florida, dated January 11, 2002.
- b. Any change to the site plan will require reevaluation of the site plan by the City Engineering Department and Planning and Economic Development Department.

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

- c. The existing conditional use approved as part of Ordinance No. 98-58 (CU-1998-11) shall be repealed upon approval of conditional use CU-2001-16.
- d. As part of the redevelopment of the site for use as a car wash, the owner/applicant shall clean contaminants from the site in accordance with FDEP requirements.
- e. The owner/applicant must remove the vacuum and parking space from the northwest corner of the site.

Although the Planning and Zoning Board did recommend approval of the site plan presented, it may be beneficial to consider the relocation of the car wash building so that it can remain functional after the “taking” for the widening of Babcock Street even if such a plan should require variances now.

Micah Savell, applicant, stated that they substantially reworked the site after finding out about the relocation and widening of the road. The self-serve bays have been removed completely.

In response to the Mayor, Mr. Savell agreed with the stipulations. Responding to Mrs. Poole, Mr. Savell said they could probably make the landscaping more aesthetically pleasing between their lot line and the restaurant. He added that he does not intend to make it an eyesore.

Mike Kane, 2100 Bryan Street, said he is concerned about the noise the 24-hour car wash will create. He noted that the surrounding area is mixed commercial and residential.

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Moved by C. Palmer/Walker for approval of Ordinance No. 2002-14 subject to the conditions as noted and subject to relocation of the car wash building.

E. Miguel, owner of Miguel's Restaurant, asked if Mr. Savell agreed to the stipulation ("d") which requires clean up of the contamination on the site.

Mayor Buckley replied yes and noted that Mr. Savell agreed with all the stipulations.

Robert Tibbetts, 1385 Rose Court and owner of 26 West New Haven Avenue, said he is glad someone is renovating the old closed down service station.

Mr. Savell referenced stipulation "d" and explained that under the environmental contamination at the site, the property is in a Superfund cleanup. It has such a low score that FDEP granted Chevron permission to close the monitoring wells. As far as the applicant cleaning up the site, that is not true. This was discussed at great length with FDEP and it would be cost prohibitive to clean up the contaminated site. As far as contaminated run off, they are going to install a water reuse system and will do their best to recycle.

Mayor Buckley asked Mr. Savell if he agreed with stipulation "d." Mr. Savell said there is no way possible that he could clean the site and he thought he made that point during the Planning and Zoning Board meeting. Mrs. Braz said it is her understanding from the Planning and Zoning Board minutes that the board recommended approval with that stipulation.

Mr. Hill said that the stipulation requires clean up in accordance with FDEP requirements and the applicant would not have to clean up the site if not required by FDEP.

At this point, Council moved on to the next item to allow staff time to review the Planning and Zoning Board minutes. The item returned immediately following Item 16.

Mr. Hill stated that the final motion from the Planning and Zoning Board included that stipulation. He said if Council wished to remove that stipulation, staff could determine the comments made at the Planning and Zoning Board prior to second reading.

Mrs. Palmer's motion for approval with the removal of stipulation "d" did not receive a second.

Mr. Hill asked Mr. Savell if he had a contamination report for the site. Mr. Savell said no but added that he can request it.

Mrs. Poole said she does not like the idea of approving the ordinance with the removal of the stipulation.

Mrs. Hand asked why they decided to make the operation 24 hours. Mr. Savell said because it is located in a commercial district and has easy access. He added that he does not anticipate any noise problems.

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Moved by Poole/Hand to postpone this item until the next meeting. Motion carried. (Mrs. Palmer voted nay.)

16. ORDINANCE NOS. 2002-15, 2002-16 AND 2002-17 AND SITE PLAN APPROVAL (AR-2001-136/CPA-2001-06/Z-2001-920/SP-2001-14): (Public Hearings/First Readings) Requests for annexation of .58 acres; establishment of Commercial/Medium Density Residential land use on .284 acres, Medium Density Residential land use on .238 acres, and Conservation land use on .06 acres; and establishment of a C-1 (Neighborhood Commercial) Use District on a .28-acre parcel; an R-2 (Cap 8) (One-, Two-, and Multiple-Family Dwelling with a cap of eight units per acre) Use District on a .30-acre parcel of land; changing the zoning on a 6.96-acre parcel from C-P (Commercial Parkway) to R-2 (Cap 8); changing the zoning on an 11.3-acre parcel from C-P to C-1; and changing the zoning on a .271-acre parcel from R-1AA (Single-Family Residential) to C-1, all located north of Parkway Drive and west of Wickham Road. The applicants are also requesting site plan approval on the west 13.537 acres. (Owners – Cheng Kuo Weng, Chang S. Weng, et al.) (Applicant – Wickham Corporate L.L.C.) (Representatives - Hugh M. Evans or Gregory T. Wood) (P&Z 1/17/2002)
- a. Ordinance No. 2002-15: A proposed ordinance to annex the property (AR-2001-136).
 - b. Ordinance No. 2002-16: A proposed ordinance to establish land uses (CPA-2001-06).
 - c. Ordinance No. 2002-17: A proposed ordinance to zone and/or rezone on the property (Z-2001-920).
 - d. SP-2001-14: A request for site plan approval on the west 13.537 acres.

Attorney Gougelman read each ordinance by title. Mrs. Braz briefed Council. This is a very complicated issue because earlier actions on properties were not correctly surveyed or executed resulting in small parcels of property that were never properly annexed and/or zoned. The proposed development for the commercial area is an office park to be considered at a later date. The proposed development for the residential area is for 108 townhomes and is included in this request. The applicant originally requested R-2 (Cap 10) zoning but only needs R-2 (Cap 8) zoning on the proposed residential portion of the site. The item was advertised at 10 units per acre. The applicant agrees to the density reduction and it should be a part of any approval by Council.

The unincorporated property is vacant and zoned EU-2 (Estate Use, minimum lot size of 9000 sq. ft.) by Brevard County. The remainder of the property was annexed into the city in 1979 (Ordinance No. 79-35). The east 300 feet of the property, adjacent to Wickham Road, was zoned C-1 and the remainder of the property was zoned R-1AA in 1979 (Ordinance No. 79-69, Z-175). The east 300 feet adjacent to Wickham Road is not subject to annexation, land use or a zoning change. In 1982, the owner was denied a request to rezone the westerly portion (25.64 acres) of the property from R-1AA to R-2

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(Cap 8) (Z-277). The owner sued the city and in 1987 won a decision from the court to zone the westerly portion of the property to R-2 (Cap 8).

In 1985, the easterly 300 feet adjacent to Wickham Road (not part of this request) was rezoned from R-2 (Cap 10.2) to C-1 (Ordinance No. 86-56, Z-450). In 1988 the city adopted the Comprehensive Plan which established a mixed use Commercial/Medium Density Residential land use on the property. In 1989, the central portion of the site was rezoned from R-2 (Cap 8) to C-P (Ordinance No. 89-60, Z-621). In 1992, an 80-foot wide strip in the west central portion of the site was rezoned from R-2 (Cap 8) to C-P. The westerly 200 feet remained zoned R-2 (Cap 8) with an ordinance provision requiring a conservation easement (Ordinance No. 92-24, Z-678). Two of these zoning ordinances (Ordinance Nos. 89-60 and 92-24) contained legal descriptions that zoned the 32.56 foot wide unincorporated strip along the north side of Parkway Drive but there is no ordinance of annexation. Other ordinances never contained legal descriptions that changed the zoning on a northerly .271-acre strip from R-1AA to R-2 or to C-P. Site plans for a large K-Mart anchored shopping center were approved in 1989 (SP-1989-14), an extension granted in 1990 (SP-1990-11) and a slightly larger plan was approved in 1992 (SP-1992-06). The latest action occurred in 1998 when the revised Comprehensive Plan was adopted. At this time the land use on the west 80 feet of the property was changed from Commercial/Medium Density Residential to Conservation.

The majority of the property has an adopted land use of Commercial/Medium Density Residential. This land use permits commercial development and/or residential development *up to 15 units per acre*. The property to be annexed (.58 acres) has a Neighborhood Commercial land use designation by Brevard County but is zoned EU-2 (Estate Use). This property with this zoning designation (EU-2) could not be developed into a residential development under the county's zoning ordinance because the strip of land is too narrow. The property to the west and northwest is the Parkway Meadows Subdivision, zoned R-1A (Single-Family Residential) with a Low-Density Residential land use and some Conservation land use. Seven lots of Parkway Meadows abut the 80-foot wide Conservation land use of the applicant's property. Across Parkway Drive to the south is undeveloped property in the city zoned R-2, undeveloped property in the county zoned BU-1 (General Retail and Commercial), and an undeveloped parcel now in the process of being annexed into the city, which will be zoned C-1. The vacant property to the north is mostly in the county and zoned BU-1. A small area of the Parkway Meadows Subdivision, zoned R-1A, is also located to the north. The property to the east is a developed office and retail site and undeveloped commercial property strip. Both are zoned C-1.

The property owner is seeking the annexation in order to receive city services. Annexing the .58-acre strip and adjacent 1.52-acre Parkway Drive right-of-way will ensure that all of the property owned by the applicant is located within the city and subject to the city's land development regulations. It will also simplify the permitting process, reduce the size of the existing enclave and eventually allow for the elimination of an unincorporated enclave that includes the subject property and several other properties in the area. Allowing this strip to remain in the unincorporated area will hinder the oversight of the property.

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Upon annexation of the narrow strip of land, a land use classification will need to be assigned to the property. Staff proposes to extend the existing land use south 32.56 feet to the north right-of-way of Parkway Drive. Three land use actions are proposed. These land uses will also match the zoning proposed by the owner/developer. The westerly 80 feet is proposed as Conservation land use, the central portion as Medium Density Residential, and the easterly portion as mixed use Commercial/Medium Density Residential. This will match the proposed R-2 (Cap 8) and C-1 zoning for the site and the property to the north. It will also provide a subtle step down in intensities as one moves west from Wickham Road.

The site is vacant and consists of a mixture of scrub palmetto and pines with some open sandy areas and small wetlands. The west 80 feet would remain as a conservation area, however, the southerly portion of this area could be used for drainage features such as wetland mitigation or a retention pond.

The westerly 200 feet of the property is currently zoned R-2 (Cap 8) and overlain with a conservation easement which was to be created as a provision of Ordinance No. 92-24. This easement was a protection from the proposed K-Mart Center for the Parkway Meadows Subdivision. Ordinance No. 92-24 also increased the area zoned C-P by 80 feet. The westerly 80 feet of the 200-foot wide conservation strip has a Conservation land use as a result of Plan amendments approved in 1998. Part of the applicant's request is to amend or repeal the last zoning ordinance condition (Ordinance No. 92-24, Section 2) to reduce the size (width) of the conservation easement from 200 feet in width to 80 feet in width to match the area designated as Conservation land use. The conditions which were present with the shopping center will no longer exist under the proposed zoning.

Area property owners opposed to the request have submitted a petition. Although the petition is in opposition to all four requested items, the primary concern expressed in the preface to the petition indicates that opposition primarily is against Code permitted building setbacks allowed by the existing and proposed zoning. Based on the petition, 11.7% (9.4 acres of the 80.07 acres) of the owners of property within 500 feet of the request are opposed. This is less than that needed to ultimately invoke the 6/7 vote rule. The property owners want no retention, building or other structure or development permitted in the 80-foot wide area and desire that the 80' buffer be extended along the north property line where it abuts the R-1A zoning.

They also expressed concern about flooding and requested that the conservation area be extended south to Parkway Drive. The proposed Comp Plan amendment will extend the conservation area south to Parkway Drive. Drainage design is an engineering function. The City Engineering Department and the St. Johns River Water Management District must approve the design of the drainage system. No design would be permitted that would cause flooding to the Parkway Meadows residents or cause "further saturation, erosion and flooding problems" or cause "liquefaction of the homeowners' soil."

There are numerous other developments in the city with townhouses developed adjacent to single-family homes. Examples include Weston Village and Weston Townhomes, The Sanctuary and Townhomes of Paradise Beach, Rio Villa Phase IV and the Townhomes

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of Paradise Beach, Pinewood Village and Greenbriar Village, Lansing Ridge and Sunbreeze Apartments. Most of these contain multiple-family or townhouse developments much closer than the building setbacks proposed with this townhouse development. The proposed setbacks comply with or far exceed the Code. Staff has contacted the developer to determine if additional yard area can be allocated where the proposed townhouse development abuts the Parkway Meadows on the north.

City Code, Appendix B, Article XII, Section 5(A)(6)(e)(2), requires at a minimum a 25-foot setback and an additional 10-foot setback for each 10-foot increase in building height over the first 10 feet in height. Article XVIII similarly requires a 25-foot setback plus 20 feet of an additional setback for building above the second story. In the R-2 zoning district, the maximum height for townhomes is 40 feet. The applicant proposes to build townhouses no more than two stories in height.

The Comprehensive Plan defines Conservation land use as permitting retention facilities. The existing ordinance governing the west 200 feet of the property also permits a retention basin in the required conservation area.

The applicant proposes to develop an office park on the C-1 zoned portion and a townhouse development on the R-2 zoned portions. Approximately 108 townhouses would be constructed on the westerly 13.587 acres for an average density of 7.98 units per acre.

The applicant has provided a site plan for the westerly 13.587 acres. The proposal is to construct a 108-unit townhouse development on the portion of the property slated for R-2 (Cap 8) zoning. This represents slightly less than eight units per acre. The conservation area would remain on the westerly 80 feet of this parcel. The applicant proposes to construct a retention pond along the west side of the site within the southerly portion of the area designated as Conservation land use. No structures, driveways or parking areas would be permitted in the conservation strip. Access would be provided from a driveway to Parkway Drive and a secondary access would be provided to Wickham Road to the east through a proposed office park slated in the future on the parcel proposed for C-1 zoning. The driveway connection to Wickham Road would occur at the time of construction of the first phase of the office complex. A 108-unit townhouse development would generate approximately 632 daily trips, which initially would all be assigned to Parkway Drive. Parkway Drive is operating well within the adopted level of service and will continue to do so upon development of this proposed townhouse project. The project will contain garages for each townhouse plus 185 additional spaces for a total of 293 spaces. A clubhouse with on-site recreation will also be provided.

To address concerns expressed at the public hearing and contained in the petition from area homeowners, the applicant modified the original plan and provided a revised plan that moves the most northerly building to increase the setback from 25 feet to 64 feet and added an extensive landscaped buffer along the north and west boundaries of the project. The townhouse units will be located at least 90 feet from the west property line and at least 64 feet from the corner of the most northerly townhouse to be adjacent single family lot boundary and will contain a heavy vegetative buffer along the north side of the

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site and between the westerly pond and the rear of the single family home to the west. The most northerly townhouse will back up to the single-family homes. The proposed setbacks far exceed the minimum setbacks required by Code.

Two retention basins will provide stormwater treatment for the townhouse development. One would be located to the west in the conservation area and the other would be a shared retention basin with the proposed office park development to the east. Drainage outfall will be to the ditch along Parkway Drive. The city and county jointly have made recent improvements to the Parkway/Horse Creek drainage basin and will continue a second phase of the project to accommodate stormwater in the area. These improvements will significantly reduce flooding potential and flooding problems that have plagued the Parkway Meadows Subdivision by improving stormwater conveyance and treatment facilities. Area residents spoke of their concerns about drainage in the area and want assurance that the project will not create additional drainage problems. The details of drainage design are determined when construction plans are submitted. No plans will be approved which would adversely impact the Parkway Meadows drainage condition. This project could actually help to alleviate some problems that are now occurring in parts of the subdivision.

The applicants have provided an Environmental Impact Assessment Report as part of the application. The site contains gopher tortoises and scrub jays, although the property is not identified as scrub jay habitat on the county's scrub jay habitat maps. There are several small wetlands on the property. Wetlands located at the northwest portion of the site, and contiguous with wetlands in Parkway Meadows, will be preserved. Permits will be required to take or relocate threatened or endangered species and to mitigate or relocate wetlands.

The proposed site plan will comply with the land development regulations upon approval of the annexation, land use and zoning actions. The Planning and Zoning Board recommended approval of AR-2001-136, CPA-2001-06, and Z-2001-920 with the findings listed in the agenda package. Additionally, the board recommended approval of SP-2001-14, Site Plan for Parkway Townhomes consisting of a one-sheet plan prepared by Brad Smith and Associates of Melbourne, dated October 29, 2001, (and with the latest revision dated February 4, 2002), with the findings contained in the agenda package and the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the City Engineering Department and Planning and Economic Development Department.

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

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

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

- c. A driveway or street connection shall be provided to Wickham Road upon development of the first phase of the commercial property to the east. If the commercial property develops first, a stub connection shall be provided to provide a future connection to the northerly portion of the townhomes project.
- d. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property and from the US Fish and Wildlife Service for any scrub jays located on or using the site. Wetland permits shall be obtained from the St. Johns River Water Management District and from the Army Corps of Engineers. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.
- e. The applicant shall construct driveway improvements along Parkway Drive if deemed necessary by Brevard County. This may include east and westbound turn lanes.
- f. The owner/developers shall pay into the bikeway/sidewalk trust fund an amount necessary to provide for the construction of a sidewalk/pedway and or bikeway along Parkway Drive or construct the pedway within the right-of-way or within an easement as determined by the City.

The site plan is subject to approval of Ordinances 2002-15, 2002-16 and 2002-17.

In response to Mrs. Poole, Mr. Hill stated that Parkway Meadows was developed under county regulations.

Mrs. Poole stated that she has looked at the site and it contains a lot of scrub jays and gopher tortoises.

Mayor Buckley called for disclosures. Mrs. Poole stated that she spoke to Andy Pisciotto, President of the Parkway Meadows Homeowners' Association.

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Jack Kirschenbaum, 1800 West Hibiscus Boulevard, attorney representing the applicant, was present.

Mr. Contreras asked if the applicant communicated with the homeowners regarding their concerns. Mr. Kirschenbaum replied that they informally met with them at the Planning and Zoning Board meeting. After several telephone conferences, they were able to meet and discuss all their concerns. He noted that their first concern relates to flooding. They have some real flooding problems. His engineer met with the residents and assured them that the applicant truly believes that the drainage and stormwater system would assist the existing homes.

Mr. Contreras stated that in other developments Council has seen where runoff from a project caused problems with existing homes. According to the applicant's plan, it appears that runoff from the existing homes would go into the proposed retention. Mr. Kirschenbaum said they think water from some of the properties to the west will wind up in their system and their system will be designed to handle that.

Mr. Contreras asked about the residents' concerns regarding deed restrictions. Mr. Kirschenbaum said they have agreed that this will be a deed-restricted community and will mirror as closely as possible the deed restrictions to the west.

Mr. Kirschenbaum stressed that they are not just seeking rezoning. He asked that Council consider the site plan issues as part of the rezoning. If Council isn't inclined to favorably accept the site plan, they do not want to proceed with the rezoning.

Continuing, Mr. Kirschenbaum displayed the site plan and reviewed the request. He noted that they are requesting a down zoning of the property that would still allow them to build townhomes. He noted that the homeowners were also concerned about a separation between the properties. At the meeting with the residents they offered a fence along the property line. One or more owners said they don't want a fence, but the applicant is happy to do either or both. Beyond the fence would be a 15' open area – green space with nothing. Working east, the retention area would run about 60' to the west. The average separation, structure to structure, would be approximately 140'. He stated that they believe that is a significant separation.

Mr. Kirschenbaum said the erection of a K-Mart type of plaza would burden this property beyond what they are proposing. The location of townhomes between the single-family homes to the west and commercial to the east would provide a buffer. The project is consistent with the Comprehensive Plan and prior court orders that required the property to be rezoned. He concluded by saying he believes this is a reasonable rezoning request.

Mr. Palmer pointed out that the residents indicated on their petition that they do not want any kind of stormwater retention located in the conservation area. Mr. Kirschenbaum said he understands that; however, that is something they can't comply with. To require an 80' strip with no retention would push the project so far east that it would not be

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feasible for other uses of the property that have been considered. Additionally, he said that use of the conservation strip for retention is permitted by City Code.

A brief discussion followed regarding the 200' buffer easement required by the K-Mart zoning request. Mr. Kirschenbaum said no document was recorded that creates the 200' strip. However, if K-Mart was constructing, the 200' buffer would be required.

Mrs. Walker asked if the applicant has met with the homeowners and addressed their drainage and flooding concerns. Mr. Kirschenbaum said he does not know that they have a solution. The residents are concerned about flooding with or without this development. He stressed that they believe they can design a system that will be approved by the city and the SJRWMD that will not impact the surrounding property in a negative way.

Mrs. Walker expressed concern with approving a site plan before (drainage) issues are resolved. Mr. Kirschenbaum said it is not possible to design a drainage system on the level of specificity required by the City Engineering Department prior to the rezoning being approved. The normal course is for rezoning, preliminary site plan approval, and then submittal of engineering plans.

Brad Smith, Brad Smith & Associates, 1800 West Hibiscus Boulevard, stated that they met with SJRWMD and discussed conceptually the proposed drainage system. They discussed connectivity between the wetlands and the retention system. The St. John's staff looked favorably on that and felt it would be a solution to a known flooding problem. The idea has merit and it should be pursued.

Mrs. Poole referenced the flooding problems in Parkway Meadows and Baymeadows. Mr. Kirschenbaum said his clients are concerned, too. However, under the present regulatory process, he does not know a mechanism that would allow a fully detailed engineering plan to be brought forward at the point they are asking for zoning.

Andrew Pisciotto, 3471 Saddle Brook Drive, President of the Parkway Meadows Homeowners' Association, pointed out that they did not solicit signatures from homeowners outside the 500' radius.

Mr. Pisciotto said the premier issue is water management and flood control. They already have flooding in Parkway Meadows and the last thing they need is a retention pond along the length of Saddle Brook Drive. The proposed retention pond will place the water as close as 15' to the homes and there has been no discussion of elevation of the retention. The ground will be graded towards the retention pond – towards Saddle Brook Drive and their homes.

Continuing, Mr. Pisciotto said the increased outflow will also affect Parkway Meadows. The increased flow to the drainage ditches will have an adverse affect on the flap valves in Parkway Meadows.

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In addition to flooding, Mr. Pisciotto said the residents are concerned about traffic flow, privacy, deed restrictions, and school overcrowding. He asked Council to examine all of the issues and take its time in making a proper and informed decision.

Nathan Price, 3217 Park Place Court, expressed concern with modifying the wetland. He noted that nothing is better than the original equipment. He referenced the annexation property and said one reason Brevard County never let this piece go is because a ditch runs the length. It is a problem ditch that has an extreme level pitch. During a storm this ditch has an unbelievable flow. Mr. Price discussed the traffic congestion at Parkway and Wickham. He noted that the proposed developer is also the developer of Parkway Meadows and he does not believe he has a good track record.

Mr. Price added that the developer is proposing a 34' elevation for the proposed project and Parkway Meadows is at 31'.

Carol Isaacson, 3445 Saddle Brook Drive, said she is located in an area that has not flooded in the past. She expressed concern with a retention pond being located 15' behind her property and said that will not leave any place for the water to go. She does not believe their retention pond will handle this.

Kathy Jones, 3453 Saddle Brook Drive, expressed concern with the proposed retention area being built 15' from her property line. She stated that her backyard gets wet now and if the proposed development is higher, the water will come down. She added that Parkway Meadows is known as the "flooding development." She will have a problem when she tries to sell her house. She noted that the applicant did meet with the homeowners, but their questions have not been answered. Ms. Jones stated that we need to keep some vacant land; the property needs to be left alone.

Lorraine Mills, 3280 Brentwood Lane, said the farthest corner of the proposed development would be 38' from her property. She noted that the cul-de-sac currently gets a lot of flooding. If they build behind her house, the elevation will be higher and the water will run into her back and side yards. She proposed that they fix the flooding problem prior to approval of the site plan. She concluded by saying she is concerned about traffic; Parkway is backed up now with vehicles.

Max Bosso, 1688 West Hibiscus Boulevard, representing Wickham Corporate LLC, stated that he is a registered professional engineer in the State of Florida. He added that he is here to address stormwater and noted that in the past, he worked for SJRWMD. Any development has to meet the regulations in order to put impervious area on a site. Pre-development versus post-development has to be met along with several different storm events. If there is still flooding in the subdivision to the west, that will only improve with the new site plan. It will be designed in such a manner that it will improve the situation.

Mr. Contreras said several of the residents have stated that the elevation in the new development is going to be higher. Logic dictates that the water will flow downward regardless of retention. Mr. Bosso said he does not know where they got their elevation

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information. Elevation has not been set for this plan; there are no engineering drawings. Regardless of the finished elevation, the water elevation in the lake will be set below the finished floor elevation of the homes. There are rules and regulations that require elevation between normal elevation and seasonal high ground elevation.

Mr. Contreras said he does not think the lake water is the issue – it is the perimeter. There will be fill and the properties will be built up. The existing subdivision will be the receptor of the runoff. Mr. Bosso said our Code does not allow for water to drain onto another property in this manner. Mr. Contreras replied that it happens all the time.

Bo Barnavon, representing Mercedes Homes, said the homeowners are making a strong case that there is a problem. However, the problem is not the developer of this site. The homeowners are missing an opportunity to work with the developer to improve the area. The property is going to get developed – it will not be a park. Something may be built down the road that is more intense, less amenable and less attractive.

Mrs. Poole said she knows the applicant believes he can solve the problem, but nobody else has. Mr. Barnavon said if Council does not have faith in its own staff, a third party consultant should be hired. He added that he knows that a system can be designed for this site that will accommodate this site and alleviate the concerns of the neighbors.

Mr. Kirschenbaum said if it is Council's position that the property can't be developed until the existing flooding problem on the adjacent property has been solved or until a stormwater system has been designed, built and tested prior to approval, the property has been frozen and will never be developed. The rezoning and preliminary site plan have to be approved in order to allow the engineering to be designed. Otherwise, the city has frozen this property forever. He asked for approval of the rezoning process and preliminary site plan in order to bring staff engineering plans.

Mayor Buckley made the following motion based on the earlier comment that the rezoning is not wanted if Council does not agree with the site plan:

Moved by Buckley/Poole to deny the project.

Mayor Buckley said putting water next to a place that has consistent flooding problems sounds like a poor idea. Mr. Palmer and Mrs. Walker agreed.

The question was called. Motion carried unanimously.

At this point, Council finished Item 15.

Recessed: 11:49 p.m.

Reconvened: 11:55 p.m.

17. COUNCIL ACTION RE: Annual contract for Melbourne Water Production Division security, Brevard Security Specialists of Melbourne, Melbourne, FL - \$74,284.80.

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Mr. Hill noted that staff has withdrawn this item in order to answer some questions. The item is expected to return on the February 26 agenda.

18. RESOLUTION NO. 1742: A proposed resolution in support of the Brevard Crossings Mall as a regional facility that will bring needed dollars and jobs to Brevard County. (Requested by City of Cocoa)

Attorney Gougelman read the resolution by title.

Moved by Hand/Poole to deny the resolution.

Mrs. Hand said if the Crossing Mall goes through, the Melbourne Square Mall and the Merritt Square Mall will suffer.

Mrs. Poole added that development on 99 acres of wetlands and mitigation going to Orange County is unreasonable. This is not in the best interest of the county.

The question was called. Motion carried unanimously.

Richard Wallace, 560 Ruth Circle, West Melbourne, asked Council to oppose the development. He added that it is not needed and if they destroy the wetlands, it will be a crime against nature.

By consensus, Council agreed to continue the meeting until 12:30 a.m.

19. RESOLUTION NO. 1743: A proposed resolution authorizing approval of Release of Restrictions to property located on Catterton Drive, north of U. S. 192.

The City Attorney read the resolution by title.

From the agenda report: At the November 13, 2001 meeting, Council denied A&V #241 requested by Edward and Patricia Windle. In preparing for presentation of the issue to Council, the Planning and Economic Development Department sought assurances that none of the lots owned by the Windles would be utilized as a separate building site without having at least a 25-foot frontage on a public road. Mr. and Mrs. Windle signed a binding deed restriction to give that assurance.

Because the vacation was not approved, the applicant has asked that the city release those restrictions. Because the roadway was not vacated, all lots have at least 25 feet of frontage on the public roadway and restrictions are not necessary.

Moved by Buckley/E. Palmer for approval of Resolution No. 1743. Motion failed. (Aye: Contreras, E. Palmer, and Buckley. Nay: Poole, Walker, C. Palmer and Hand.)

Attorney Gougelman confirmed for Mrs. Palmer that he prepares a great number of documents for applicants when city staff is interested in seeing a document prepared.

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Preparation by the City Attorney ensures it is binding, drafted in correct form, and expedient.

20. COUNCIL ACTION RE: A request for release of the Reverter Clause for the ARC property on Hickory Street for \$230,000.

From the agenda report: This is a request by the Association of Retarded Citizens of Brevard (ARC) regarding a reversionary interest the city has in property on which the ARC facility is located. ARC would like the city to release the reversionary interest.

ARC has its facility on 4.86 acres of property at 1130 Hickory Street (north of Holmes Hospital). The property was deeded to ARC by the city in 1976. The deed to the property has a specific reverter clause which states the property is to be used "for the erection and maintenance of an educational facility for retarded children." However, "whenever same shall cease to be used for such purpose then the title to the described real property shall revert back to the City of Melbourne."

ARC has apparently received offers from Holmes Hospital and Melbourne Internal Medicine Associates (MIMA), a medical firm located next to the ARC property. ARC has contracted to sell the property to MIMA and plans to use proceeds from the sale to fund and build a larger facility at a different location. They are offering the city \$230,000 for release of the reversionary interest. They cannot complete the sale without some settlement of the reversionary interest. ARC retained Maxwell Appraisal & Consulting Group of Melbourne to conduct an appraisal of the property. Maxwell Appraisal valued the property at \$1,200,000 without consideration of the reversionary clause. The Brevard County Property Appraiser values the entire property at \$1,424,730.

The city obtained its own appraisal from W. H. Benson & Company. It is difficult to assess a reversionary interest as explained in the materials provided by the City Attorney. Nonetheless, in the view of our appraiser, the city should be a participant to the contract and should receive 50% of the consideration. We have been told the contract for sale is \$1.8 million. ARC has provided an additional response regarding the W. H. Benson & Company appraisal.

Council needs to consider the relative merits of releasing the reverter. If the city does not, or requires too much as compensation, it is probable that the ARC relocation will not occur. ARC should state to Council the minimum amount it needs to take away for the contract to make it possible to sell the property. Council could then consider the amount it would gain for releasing the reverter.

Philip Nohrr, attorney on behalf of ARC, distributed information regarding ARC. He discussed ARC's services, mission statement, value statement, and history. He noted that the facility on Hickory Street is the only property encumbered by the reverter clause. ARC took title in 1976 subject to the reverter clause. ARC built the building and maintained the building and property with their own funds since that time. They have now outgrown their facility and will be able to use the proceeds from the sale of this facility to build a larger facility in North Melbourne.

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Mr. Nohrr stated that there is a definite need for the residents and citizens of Melbourne for what ARC provides. He noted that he represents the buyer of the property, MIMA. If the sale occurs, the city can obtain a lump sum of money, the property will be placed on the tax rolls, and ARC will be in a better position to perform its mission and reach more individuals in the community who are in need. ARC has been in existence for 45 years and given the needs of its clientele, they could be in existence for another 45 years.

Mr. Nohrr discussed the value of the reverter. He noted that the contract price is \$1,842,000 and Mr. Benson says that the value of the city's reverter interest is of the same dignity and level of ARC's use. Therefore, the reverter should be 50% of the market value of the property. Mr. Nohrr said that is the first problem. The ARC appraisal came in at \$1.2 million. There was a bidding war and the price was artificially increased.

Continuing, Mr. Nohrr said Mr. Benson's report is interesting. He acknowledges the value of the reversionary interest is dependent on the duration of time between the present and the reversion. He acknowledges there is no termination or time limitation associated with ARC and it could be perpetual. Then he says if the time is perpetual, the value of the reverter would be zero. Additionally, he acknowledges the reversionary interest has no marketability or liquidity; however, he notes that the same is true of ARC. His conclusion of 50% conflicts given that ARC could be perpetual, which in turn would make the value zero.

Mr. Nohrr said there is no scientific way to appraise the reversionary interest. The figure of \$230,000 provided by ARC's appraiser was based on the value of the land in 1976; that is just his opinion. Regarding the sale price, that is a gross number. The fee alone will be almost \$200,000 and the money ARC would receive would be approximately \$1.6 million. ARC determined that the amount it can live with that would allow it to continue doing its job would be \$500,000. They want to do their job, move to a new facility and they need every penny of the sale to MIMA. However, ARC realizes that the city has legitimate rights.

Mrs. Poole stated that she has a deed dated February 18, 1972 (as opposed to 1976). Following a brief discussion, Mr. Nohrr questioned if the 1972 deed is the result of a land swap on property at Sheridan and Maple (which is now Apollo).

Mrs. Poole stated that she would like a title search done on the property. She added that the reverter was put in place to protect the city – not to give the property away for a minimal cause and personal reasons. Her motion to postpone did not receive a second.

Mr. Palmer said they have an appraisal of \$1.2 million. The difference between that and the offer is \$642,000; therefore, it seems to him that \$600,000 is a good number to start with as the value of the reverter. Mrs. Walker agreed.

Moved by E. Palmer/Contreras to accept \$600,000 as the cost of the reverter.

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Mrs. Poole said this was predicted. When the two cities merged, they did not want the property given away; they wanted to protect it. If the city denies the request, ARC can expand and build at its current site. If they want to leave, they can leave and the city can sell the property for \$1.8 million. She asked if Council is so anxious to get something out of the city and into the north area.

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

Mr. Hill noted that the item will return with a quit claim deed and authorizing resolution.

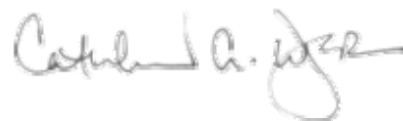
The Mayor noted that the remainder of the agenda items will return on the next agenda.

At this point, Council adjourned.

21. RESOLUTION NO. 1744: A proposed resolution opposing the expansion of oil drilling in the Everglades. (Requested by Council Member Poole)
22. COUNCIL ACTION RE: A request for Mayor Buckley to travel to Washington, D.C., as part of the Economic Development Commission of Florida's Space Coast delegation, March 5-8, 2002.
23. COUNCIL ACTION RE: Board Appointments
 - a. Downtown Architectural Review Board - two regular members
 - b. Melbourne Downtown Redevelopment Agency Advisory Committee – 3 regular members
24. PETITIONS, REMONSTRANCES AND COMMUNICATIONS
25. ADJOURNMENT

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

The meeting adjourned at 12:36 a.m.



City Clerk - 2/22/2002

Approved by Council _____