

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
MARCH 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 Neil Ricketts, 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
	Bud Emerson	Assistant City Manager
	Peggy Braz	Planning and Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

“United States Military Academy Bicentennial Day”, March 16, 2002; accepted by John Gulla, Vice President, Space Coast West Point Society and United States Military Academy Class of 1960.

Certificate of Achievement for Excellence in Financial Reporting award from the GFOA; accepted by Director of Finance Amy W. Elliott. Ms. Elliott stated that the Accounting staff worked incredibly hard to win this award.

5. APPROVAL OF MINUTES – February 26, 2002 Regular Meeting

Moved by Contreras/Walker for approval. Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mr. Hill referenced the report distributed from Housing and Community Development outlining how other Community Development Block Grant entitlements are allocated in comparison to the City of Melbourne. The analysis includes a comparison chart with information on Brevard County and the Cities of Palm Bay, Titusville, and Cocoa.

Mayor Buckley referenced the report distributed on the last PBA negotiation session. The PBA is expected to conduct a ratification vote on March 21.

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7. PUBLIC COMMENTS

Kelley Alfonso, 1290 Sunwood Drive, referenced his letter distributed to Council last Friday and requested that an American Flag be painted on the Oak Street water tower during its renovation.

Mr. Hill was instructed to investigate the cost and return to Council with a report.

Dr. Rick Walker, 2616 Melwood Drive, requested that street lights be placed on Melwood Drive. He noted that the request is being made on behalf of the entire neighborhood.

Staff will investigate and contact Mr. Walker.

UNFINISHED BUSINESS

8. RESOLUTION NO. 1751: A proposed resolution and Quit Claim Deed for release of the reverter clause on the ARC, Inc. property on Hickory Street in exchange for \$600,000. (Approved by Council 2/12/2002)

Attorney Gougelman read Resolution No. 1751 by title.

Moved by Hand/E. Palmer for approval of Resolution No. 1751.

Mrs. Poole stated that she is opposed to the sale of city property. Additionally, the city may have a need for this property in the future.

Moved by Contreras/E. Palmer to put the \$600,000 in the capital reserve for the fire station (Station 4 proposed for Hibiscus Boulevard, between Oak and Hickory Streets).

Mr. Contreras confirmed that the intent of his motion is for the item to return on the next agenda for discussion.

The question was called on the motion regarding the use of the \$600,000. Motion carried unanimously.

The question was called on the motion for approval of the resolution. Motion carried. Mrs. Poole voted nay.

9. ORDINANCE NO. 2002-13 (CU-2001-15/SP-2001-12/STORAGE DEPOT PHASE 2): (Public Hearing/Second Reading) An ordinance granting 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. (Owner/Applicant – Storage Depot Phase 2/James Kaufman) (Representative – Richard Kern) (Postponed by Council 2/26/2002)

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

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This is the second reading of an ordinance, which was postponed at the February 26, 2002 Council meeting. During the previous public hearing on this item, there was considerable discussion regarding the access road that is intended to connect Eau Gallie Boulevard to the subdivision to the south.

The City Attorney and Planning and Economic Development Director reviewed the 1985 agreement for funding the roadway. They have determined that it is recorded in the public records; however, it is strictly a private agreement that the city has no ability to enforce except by requiring those developing the property to agree to implement it. Mr. Kaufman's sole responsibility according to the agreement is to provide the easement to the property owners to the south and \$50,000 toward construction of the road.

As part of the county permit for Phase 3A of Oceanside Village for access off North Riverside Drive, the subdivision developer is required to construct access to Eau Gallie Boulevard at the time Phase 3B is constructed.

Council needs to consider whether or not the city should pursue construction of the road. If that is the desire, staff will need to coordinate with all the entities that have an interest in the easement and determine when and how the road will be constructed. Other than agree not to vacate the agreement, there is little that we can require of Mr. Kaufman.

Should Council wish to confirm its ultimate desire to see the road constructed, the following stipulation should be adopted as a part of Ordinance No. 2002-13:

- d. The Owner/Developer, James Kaufman, shall execute an agreement with the City acceptable as to form and substance to the City Manager/City Attorney, waiving and releasing any right to challenge the validity of the easement granted by or the underlying Agreement recorded in January, 1988, in Official Records Book 2874, Page 2483, Public Records of Brevard County, Florida.

Mr. Hill referenced the memorandum distributed regarding stipulation "d." Mr. Kaufman spoke with the City Attorney and indicated that as drafted, stipulation "d" would not be acceptable. Mr. Kaufman provided language that he thought would be acceptable. The City Attorney has made necessary legal revisions to Mr. Kaufman's proposal and that has also been distributed. Mr. Hill stressed that the city's concern is that we not have an easement should there be a need for the roadway.

Attorney Gougelman clarified that he made one substantive change to Mr. Kaufman's proposal. Mr. Kaufman proposed that the right to the easement agreement remain in effect for five years. Attorney Gougelman said he changed that to 20 years.

Mr. Palmer referenced the memorandum in the package from Peggy Braz, which indicates that "...Storage Depot 1 appears to have been made non-conforming with no frontage."

Attorney Gougelman explained the history. The original agreement was between C & S Associates (Bob Cochran, Sr.) and James Kaufman as trustee. According to the

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easement agreement, there would be an 80' wide, four-lane roadway. The road would run from Eau Gallie Boulevard to the approximate 140-acre parcel to the north (the Cochran property, which has now been sold to Todd Schweizer). Mr. Cochran has a two and one-half to three-acre parcel that is now landlocked. A church located to the north did not have any access to a public or private roadway as required under our Code. Mr. Gougelman said he believes Mr. Kaufman deeded about 40' of the 80' wide easement to the church so they would have access to Eau Gallie Boulevard. When Mr. Kaufman did that, he cut off access to Storage Depot 1. The Storage Depot 1 access is now over a 40' wide strip owned by the church. Mr. Kaufman will say he reserved some easement rights to access his site; however, it is not clear whether that is sufficient to square with our Code. The Planning and Economic Development Director would have to make that determination.

Mr. Palmer said he is concerned that if we don't get the roadway issue resolved, Storage Depot 1 will be non-conforming. Therefore, it is imperative that we resolve this issue.

In response to Mrs. Palmer, Mrs. Braz said she provided Mr. Kaufman with a copy of the City Attorney's language this evening.

Mr. Hill stated that his recommendation is to adopt stipulation "d" as currently written and provided for in the ordinance. He added that he does not wish to see the city get between those private property interests. Additionally, there is a long-term benefit to the road being constructed. Staff feels it is appropriate to ask everyone to agree to what they previously agreed to. When it is time to construct the road, the parties can rely on their agreements. Mr. Kaufman is concerned that he not be obligated to spend more than he originally agreed to. Mr. Hill stressed that we do not want to find ourselves in a position where the prospect for the road is whittled away because parcels have been sold, exchanged, agreements made, etc.

Mr. Gougelman pointed out that one of the review conditions from Brevard County on the Schweizer property was that there be a connection to Eau Gallie Boulevard. There is a concern that the 140-acre development have access and the only way at this point that is going to happen is through the 1985 agreement.

James Kaufman, applicant, stated that he is not opposed to the road nor is he trying to stop anyone from building the road. He added that he made a deal with Cochran, Sr. and provided an easement. The terms are covered in the agreement.

Continuing, Mr. Kaufman said the three acres to the south owned by Cochran, Jr. are not landlocked. There is paved access to A1A and South Patrick Drive. Storage Depot 2 is located hundreds of feet from the road and does not need the road. Planning and Zoning indicated it was a non-issue; however, the Planning Department triggered the issue with the roadway. He added that he believes his suit against Cochran for reimbursement over drainage issues has lead staff to believe that the easement is in jeopardy. And, the city wants him to give up all rights to sue Cochran. Further, he noted that Storage Depot 2 can't get site plan approval and is now being told that Depot 1 is non-conforming.

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Mr. Kaufman explained that he deeded half the easement to the church for access. The church gave easements in return to cross. Storage Depot is the only property with that problem. Mr. Kaufman repeated that Mr. Cochran is not landlocked; that he (Kaufman) has pledged land once and it has been recorded; that he has been held up for four to six weeks; that the four-lane roadway would serve only a three-acre parcel; and that he is suspicious of the timing of being threatened that Storage Depot 1 is non-conforming.

Mayor Buckley referenced the stipulation provided by Mr. Kaufman and the change to a 20-year period mentioned by the City Attorney. Mr. Kaufman said he has waited 17 years and he is willing to go as long as necessary if the roadway is built. However, he questioned why an easement should be retained for another 20 years if the construction to the south is deserted.

In response to Mrs. Poole, Mr. Kaufman said the attorneys worked out the easement given to the church. He added that he never dreamed that would create a problem.

Following a brief discussion, Mr. Hill said Mr. Kaufman continues to get hung up by the portion of stipulation “d” that indicates “...or the underlying agreement...” He believes that wording would prohibit him from suing Cochran. Mr. Hill stressed that the city is not asking him to waive that. We are simply asking him not to challenge the easement. Mr. Hill added that there is more to the issue at this point because Mr. Kaufman has leased part of the easement to the Roadhouse Grill for use as parking.

Mr. Kaufman explained that the easement belongs to the church, Texas Roadhouse Grill, Storage Depot, and Charlie and Jake’s. They all have a right to challenge the agreement. He added that he does not believe there will be a lawsuit and he didn’t say that he was going to sue, rather, he said he cannot waive the rights of other people. He concluded by stating this is not an issue for this site plan.

Attorney Gougelman clarified that if the underlying agreement is invalidated, then the easement goes away. If the easement goes away, the roadway will never be built and that is the city’s concern. There have been other real estate interests involved and all of those are subordinate to this easement.

Mrs. Palmer asked Mr. Kaufman if he is prepared to uphold stipulation “d” as recommended by the City Manager. Mr. Kaufman replied no. Mrs. Palmer said she is perplexed to suddenly learn that Mr. Kaufman has sold, leased, and given bits of the easement away. Mr. Kaufman replied that all those interests expect to dedicate the property. When the property was leased to them, they were told that when the road goes in, they will lose parking, etc. Mrs. Walker asked Mr. Kaufman if he had that in writing (from those he leased to) and Mr. Kaufman replied yes.

James Fallace, attorney representing Livco Nurseries, Inc., stated that he represented Cochran when he sold the 130 acres to the various entities. He clarified that Cochran individually does not own the 2.4-acre parcel, it is owned by Livco Nurseries, Inc. (Later in his presentation, Mr. Fallace indicated that Mr. Cochran has an interest in Livco.) The property deeded to Schweizer and Livco was all owned by C & S. Mr. Fallace stressed

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that the agreement can't be separated from the easement because they are the same. He commented that it is disingenuous (referring to Kaufman) to say you are going to attack the agreement, but that you will still give the easement.

Continuing, Mr. Fallace said Kaufman is wrong about there being other access for the Livco property. There is an easement through Schweizer's property, which connects to the Kaufman easement, so there is no other way. He stressed that their property is landlocked. Access to major structural buildings is through parking lots and the city has been put on notice that Kaufman repudiates the agreement.

Mr. Fallace concluded by saying his client is landlocked and a cell of commercial properties is being created with no roadway. He asked that they not have access cut out by the deeding, selling and leasing of property. It is creating a nightmare for the subdivision with one exit on Riverside Drive that does not have the capacity. (Mr. Kaufman) is deeding the property away and now he wants to put up Phase 2 without a roadway. Mr. Fallace questioned if there is concurrency in place. There is a Kaufman easement and agreement in the public records and everyone relied on it. The proposed action does not comport with our Code, therefore it should be denied.

Mr. Kaufman responded and stated that Livco Nurseries has paved access from their property to South Patrick Drive – they are not landlocked. He added that (Livco) wants a corridor to Eau Gallie Boulevard because it will make their land much more valuable and that is what this is all about.

Attorney Gougelman made the following items a part of the record: the City Code, City Comprehensive Plan, the agenda package from this meeting and past meetings, and the Planning and Zoning file.

Moved by Poole/C. Palmer to deny Ordinance No. 2002-13.

Mr. Palmer stated that the issue regarding the roadway has to be resolved.

The question was called. Motion carried unanimously.

10. ORDINANCE NO. 2002-14 (CU-2001-16/SP-2001-11/WATER WHIRLED CAR WASH): (Public Hearing/Second Reading) A request for a conditional use for a car wash on property 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) (First Reading 2/26/2002)

Attorney Gougelman read Ordinance No. 2002-14 by title. There were no disclosures and no comments from the audience.

Moved by Walker/C. Palmer for approval of Ordinance No. 2002-14.

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Mrs. Poole referenced the letter from Hugh Houghton, Environmental Specialist, Brevard County (distributed at the February 26 City Council meeting), which indicates that the property has relatively high levels of contamination. She noted that cleanup of this site is considered low priority – not because of the level of contamination – but because of the size of the property. Mrs. Poole added that there is no way the water from the car wash site will be retained on site. Contamination will discharge onto adjoining property, which leads to the Indian River Lagoon.

The question was called. The roll call vote was:

Aye: Contreras, Walker, C. Palmer and Buckley

Nay: E. Palmer, Poole and Hand

Motion carried.

Recessed: 8:55 p.m.  
Reconvened: 9:06 p.m.

11. ORDINANCE NO. 2002-18 (A&V #248): (Public Hearing/Second Reading) A request to abandon and vacate a 60-foot wide right-of-way that intersects Moss Road between Mosswood Drive and Stewart Road. (Requested by Mehran Ghaeenezadeh) (First Reading 2/26/2002)

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

Moved by Contreras/Walker for approval of Ordinance No. 2002-18. 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: Council consideration of Harbor City Golf Course improvements and project funding.
- a. Contract for Harbor City Golf Course Greens Renovations, Project No. 02400, Total Golf Construction, Inc., Vero Beach, FL - \$342,882.51.

Mr. Hill reviewed the agenda report. This is a proposed contract award for construction of new greens at the Harbor City Golf Course.

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As was done last year at the Melbourne Golf Course, the work consists of removing the greens from all 18 holes, then reconstructing the greens. This will include under-drain systems that improve playability and will make the greens better during and after inclement weather. Last year's project went smoothly and the resulting greens are very popular with golfers.

City staff negotiated a contract amount with Total Golf Construction, Inc. of Vero Beach, Florida in the amount of \$342,882.51. Total Golf Construction was the contractor on the Melbourne Golf Course greens renovation project. Total Golf has agreed to honor the same unit prices as used on the last project. The proposed contract amount is based on estimated quantities times those unit prices. In a sense, the City will be piggy-backing that contract with this new contract.

A standard city contract will be utilized for this project. The time for completion is 120 calendar days and liquidated damages for failure to complete on time are \$200 per day.

Funding is available in the form of loan proceeds from the General Fund. Resolution No. 1746 authorizes the loan from the General Fund to the Golf Course Fund.

- b. Resolution No. 1746: A proposed resolution authorizing an interfund loan from the General Fund to the Golf Course Fund in an amount not to exceed \$385,000.

Attorney Gougelman read the resolution by title.

Mr. Hill reviewed the report and noted that Resolution No. 1746 provides internal financing for the Harbor City Golf Course greens renovations and drainage improvement project. The resolution authorizes a loan not to exceed \$385,000 from the General Fund to the Golf Courses Fund. The loan is to be repaid in monthly installments at an interest rate equal to the rate paid by the State Board of Administration (SBA) plus one percent (1%) initially, then at the interest rate received on the core funds invested by Public Financial Management (PFM) plus one percent (1%), once PFM begins active portfolio management.

The loan facilitates the construction of the project at very favorable financing rates for the Golf Courses Fund compared to commercial financing. Moreover, it will allow the General Fund to receive additional interest earnings beyond what it currently receives. The General Fund has cash resources available to make the loan since this is money which otherwise would have been invested at the SBA. We received proposals for external financing from local banks, but did not feel the rates justified external financing. We will monitor market conditions to determine if external financing should be provided later in the year.

Moved by Walker/E. Palmer to award the contract to Total Golf Construction, Inc. in the amount not to exceed \$342,882.51. Motion carried unanimously.

Moved by E. Palmer/Hand for approval of Resolution No. 1746.

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Mr. Contreras asked in general if there has been any consideration of a rate increase. Mr. Hill noted that it has been seven or eight years since there was an increase and at some point that may be necessary.

The question was called. Motion carried unanimously.

13. COUNCIL ACTION RE: Consent Agenda

Moved by Hand/E. Palmer for approval of the consent agenda. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Resolution No. 1750: A proposed resolution to apply for the Federal Emergency Management Agency for funding through the Assistance to Firefighters Grant Program to purchase Advance Life Support equipment to upgrade three engines.
- b. Annual contract for exclusive operation of City golf course snack bars and lounge service concessions, Fairway Stops, Inc., Kenilworth, NJ, for \$200 monthly utility fee plus an 18% Commission fee on gross sales.
- c. Amendment to operation and use agreement with the Junior League for the facility to be constructed by the Junior League at Lipscomb Street Park Community Center.

14. COUNCIL ACTION RE: A request for approval of a \$17,925 increase to the Brevard Neighborhood Development Coalition for the Booker T. Washington Gateway Improvement Project and authorization to make the necessary budget adjustments.

From the agenda report: The Brevard Neighborhood Development Coalition (BNDC) is requesting an increase of \$17,925 in CDBG funds awarded as part of the 2001-2002 CDBG Action Plan. This will provide additional funding to the Booker T. Washington (BTW) Neighborhood Gateway Improvement Project.

Council previously approved a CDBG award of \$13,140 to BNDC for a project for the design and construction of landscaped gateways into the Booker T. Washington Neighborhood. The proposed gateways will be at the Lake Washington Road/Avocado Avenue intersection and the Masterson Street/Avocado Avenue intersection. A final design has been developed in consultation with the neighborhood.

The original project assumed a simple sign with emphasis on landscaping. However, with the neighborhood review workshops, residents stated a preference for signage with a strong visual impact; long-term durability was stressed. While landscaping was deemed important, the emphasis was placed on installation of unique, attractive signage. The outcome was a more costly product.

The total estimated cost for the new design is \$47,846. This requires an increase of \$17,925 in BNDC's award from \$13,140 to \$31,065, for the BTW Gateway Improvement

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Project. Funds for the requested increase are available in the BTW Revitalization Strategy Phase I project budget. Council will recall that the BTW Revitalization Strategy Phase I project represents set-aside funding for activities that will benefit the Booker T. Washington Neighborhood. Other sources of funding for the project include a grant for \$1,858 from Keep Brevard Beautiful and \$14,923 in in-kind services consisting of architectural and construction design work and labor.

Right-of-way use agreements will need Council approval once plans are finalized and staff is working with South Brevard Habitat for Humanity on this. Habitat has tentatively agreed to assume primary responsibility for the maintenance and upkeep of the gateways once BNDC has completed the project.

The recommendation is for approval of the \$17,925 increase to BNDC for the BTW Gateway Improvement Project and Council authorization to make the necessary budget adjustments as outlined in the agenda package.

Moved by Hand/E. Palmer for approval of the \$17,925 increase to BNDC for the BTW Gateway Improvement Project and Council authorization to make the necessary budget adjustments as requested.

Mrs. Poole read from this agenda report and the projects and activities listed in the February 26 Council minutes. Mr. Contreras called a point of order based on Mrs. Poole reading information that has already been provided to Council. Mayor Buckley asked Mrs. Poole to indicate the point of the discussion. A brief discussion continued regarding the point of order.

Continuing, Mrs. Poole referenced the high cost of the signage and stated that there are no entry signs in the North and South Target Areas. She asked if the signs will benefit the youth in the BTW neighborhood and said she feels the funds would be better spent upgrading the neighborhood.

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

15. COUNCIL ACTION RE: A request for technical revisions to the 2001-2004 SHIP Housing Assistance Plan and an award of \$50,000 to the SHIP Rental – Special Needs Strategy to the Children’s Home Society of Florida, Inc., Brevard Division.

From the agenda report: The Children’s Home Society of Florida, Inc., Brevard Division (CHS), requested match funding of \$50,000 to assist in the construction of a group home at Hacienda Girls Ranch for the purpose of operating a pre-independent living program for girls ages 16-17. The total project is estimated to cost \$323,000. The ranch currently consists of three cottages housing up to 45 girls between the ages of 6 and 18. The ranch provides foster care to girls who have been removed from their parents due to abuse or neglect and have been placed in the custody of the Florida Department of Children and Families.

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The pre-independent living program would prepare the girls with the life skills necessary to transition to independent living once they reach the age of 18. The girls constitute a special needs category in that they are threatened with homelessness. Once in foster care, the girls are considered to be a household of one with no income; therefore, the State Housing Initiatives Partnership (SHIP) Program considers them very low-income.

CHS also requested approval for \$123,000 in SHIP funds from Brevard County. Unfortunately a lack of a quorum resulted in the inability to approve the request. Also, the County is looking for the CHS to provide documentation on match commitments from other entities to demonstrate the agency's ability to fund the entire project. CHS has arranged a loan from its corporate entity for up to \$200,000. The debt service on the loan would be repaid from their operating budget, with fundraising efforts over the next five years to pay off the principal. A \$50,000 deferred payment loan from the city would offset the need for as much funding from CHS Corporate, thereby lowering the debt service and allowing more operational funds for program services. Funds are available from the SHIP Rental-Special Needs Strategy.

If Council believes this project should be approved, it will be necessary to approve a technical revision in the 2001-2004 SHIP Housing Assistance Plan. The revision would expand the definition of special needs to include homeless and those threatened with homelessness and would allow for a \$50,000 per project maximum award in the case of group homes.

Rene Ledford, Executive Director, Children's Home Society of Florida, asked Council for full consideration and noted that these girls are at risk for homelessness. She said that the funding would help them meet a very well defined need in Brevard County.

Mrs. Palmer asked how many additional girls this would serve. Ms. Ledford replied eight and added that she did receive a letter of support from the Department of Children and Families. Mrs. Palmer said she believes it is important for these girls to have a transitional period after being released from foster care. This program would take care of problems before they arise.

Mrs. Poole commended the program and asked what other entities are providing a match commitment. Ms. Ledford said they have applied to other sources, including the county, Eckerd Foundation and they have an active board that is vigorously pursuing fundraising activities. Mrs. Poole recommended that other cities be contacted and asked to provide support.

Mrs. Palmer asked if this approval would take away from other special needs category. Joy Williford, Housing and Community Development, replied that this would be \$50,000 out of one year and we have \$50,000 over the next two years available for this strategy that other groups can apply for. She added that there are also HOME funds available.

Moved by E. Palmer/C. Palmer for approval of proposed technical revisions to the 2001-2004 SHIP Housing Assistance Plan, a \$50,000 SHIP Rental Special Needs Strategy award to the Children's Home Society of Florida, Inc., Brevard Division, and authorization

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for the City Manager to execute an agreement associated with the award. Motion carried unanimously.

16. ORDINANCE NO. 2002-19 (Z-2002-921/SP-2002-02/LAKE IN THE WOODS APARTMENTS): (Public Hearing/First Reading) A proposed ordinance to rezone two parcels consisting of 46.49 acres from R-2 (cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) to PUD (Planned Unit Development) with a preliminary development plan on the same property located on the west side of Stack Boulevard between Eber Road and Palm Bay Road. (Owners – Lake in the Woods Apartments, Inc, and KRC Melbourne LP) (Applicant – Kisco Retirement Communities) (Representative – Anthony A. Ferraro) (P&Z 2/21/2002)

Attorney Gougelman read Ordinance No. 2002-19 by title.

Ms. Braz briefed Council, noted that the property is vacant, and discussed the history of zoning, rezoning, etc. The applicant is requesting a change in the zoning to permit the development of an integrated quasi-neo-traditional residential development, which will include single-family homes, duplexes and a common recreation facility with public streets and private easement alleyways, retention and useable open space and wetland preservation areas. The property has an adopted Low-Density Residential land use, which allows no more than six residential units per acre. The proposed plan of development required with the Planned Unit Development application consists of 117 single-family lots and 35 duplex lots (70 units) for a total of 187 units on 46.49 acres or 4.02 units per acre.

City staff believes a minor collector road within the right-of-way located along the south boundary of the site should be considered. This roadway would be an extension of Range Road that could eventually connect Babcock Street at the Sun Lakes Road intersection. City and county staff met to discuss this future collector street proposal, which could extend to West Melbourne. In order to construct the street, a bridge crossing of the canal to the west of the site is needed. The south 20 feet of the property between the FPL easement and the south property boundary should be conveyed to the city to provide sufficient right-of-way to develop the minor collector street. This could easily be accomplished since the south 20 feet is isolated from the rest of the site by the FPL power line and easement. The FPL power line easement envelopes the west 600 feet and the south 180 feet less the south 20 feet of the property and the power line extend to the east side of the property not covered by an easement. This area which includes 5.3 acres will be used for retention, recreation and recreation vehicle storage.

Drainage would be provided in five stormwater ponds and the preserved wetlands in the center of the property. The ponds will contain piers so that the ponds can be credited as being useable open space. Stormwater outfall would be to the drainage canal to the west.

Access to the development will include a guardhouse at Stack Boulevard. Access will also be to the proposed Range Road extension when that street is constructed. The applicant is requesting a variance from Chapter 29 of the City Code to not provide a stub

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street connection or tract for a future stub street connection to the vacant property to the north zoned residential. City Code requires a street connection to adjacent vacant properties with the same general land use and zoning type and to other adjacent rights-of-way. Since a private alley is proposed along the north boundary it would be somewhat unusual to provide a connection to the property only from an alley. The residents of Bayberry Subdivision have requested a vegetative buffer where their subdivision abuts the proposed development. The applicant's representative met with the residents of Bayberry Subdivision and developed an attractive landscaping buffer that is agreeable to the residents.

The applicant is requesting an additional variance from Chapter 29 in order to eliminate the required 10-foot wide utility strip along the front of all lots adjacent to the street. The reason for this is that since the project is being developed with alleys, all private utilities would be placed in the alleys nullifying the need for the easement. Also, the applicant is applying for a variance through the Board of Adjustment of 20 feet to permit a front building setback of five feet. By granting the variance it would ensure that the motor vehicle access to garages from the alley is provided. No garage front homes would be constructed in the development. One of the reasons for a front setback of 25 feet in any residential district is to permit the parking of cars in the driveway between the front of the house and the sidewalk. Since vehicles will gain access from the rear alleys no such parking is needed. The street design will accommodate on-street parallel parking. In this regard, the request for the variance for no utility easement is consistent with the City Code.

With the neo-traditional street design an extensive pedestrian system, including sidewalks, landscaped and brick textured crosswalks will be provided throughout the development. Traffic circulation will be well dispersed throughout the site although traffic will have access only to Stack Boulevard until the Range Road extension is constructed.

The next phase of development would be the submittal of a preliminary plat and final development plan/final plat. The streets will be platted as public streets. Access will be provided to/from an entrance street connecting to Stack Boulevard with a future connection to Range Road.

According to the Environmental Impact Assessment report, the site does contain gopher tortoises and is identified as being partially located within the foraging range of a scrub jay family. The scrub jay family is thought to inhabit the vacant parcel to the north. The latest analysis indicated that scrub jays do not inhabit the area. The site does not overlay an aquifer recharge area.

The intent and concept of the PUD district is to "encourage and permit variation in residential developments by allowing deviation of lot size, bulk or type of dwellings, density, lot coverage, and open space from that required in any one residential land use classification. It is recognized that through ingenuity, imagination and flexibility, residential developments can be produced that are in keeping with the intent of this section while departing from the strict application of conventional use and dimension requirements of other zoning districts and subdivision regulations."

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The Planning and Zoning Board recommended approval of Z-2002-921 with the findings listed in the agenda package and the following conditions:

- a. The proposed preliminary development plan (site plan) shall be consistent with the one-page site plan for Reflections at the Fountains prepared by Bussen-Mayer Engineering Group, Inc., of Merritt Island, Florida, under Project Number 298401, dated February 14, 2002.

Any change to the preliminary development plan (site plan) will require reevaluation of the plan by the City Engineering and Planning and Economic Development Departments. Any substantial change to the plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change includes, but is not limited to: 1) a decrease of 5% or more of open space or vegetative areas on the site; 2) a 10% or more increase in the number of units; or 3) a reduction in the number of access points to existing or proposed public rights-of-way.

- b. Convey by warranty deed the south 20 feet of the parcel for a future collector road right-of-way.
- c. If the final development plan is substantially the same as the preliminary development plan, the applicant will be granted a variance from City Code, Chapter 29, Section 29-6 (b) (8) a. 1. and shall not have to provide a 10-foot utility strip along the front of all lots, and granted a variance from City Code, Chapter 29-6 (b) (1) (b) and (c) to allow for the development of the plan without a street connection to the north at the time the plat (final development plan) is submitted.
- d. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.
- e. Heavy construction activities should be conducted outside the scrub jay nesting season, which is from March 1 to June 30.

Staff believes that the applicant should pave the right-of-way to the south that will eventually connect Stack Boulevard with Dairy Road. (The development to the west will be building a substantial portion of the roadway). This proposed development includes 187 units which will pay a total road impact fee of \$142,038. Because the proposed road will be a collector street, the development will qualify for an impact fee credit. The applicant has agreed to construct the road as long as the cost will be covered by land and/or road impact fee credits.

As a result, staff recommended an additional stipulation, as follows:

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- f. Pave the 60' right-of-way (20' to be donated - see condition "c") along the south property line to city standards at a cost not to exceed the land and road impact fee credits for the proposed development.

Mrs. Braz responded to Mrs. Palmer's questions regarding setback and green area. Mr. Contreras asked if this development will be similar to Celebration (Disney) and Mrs. Braz replied yes.

Mrs. Braz informed Council that the Bayberry residents were concerned about the area where the two developments will abut. The residents have asked for a wall and vegetative screen and the applicant has indicated a willingness to work with the residents.

Mr. Palmer asked if the Code allows the use of retention lakes as common area and Mrs. Braz replied yes.

Mrs. Braz clarified the utility easement variance request for Mrs. Poole. Mrs. Poole said she has asked in the past that we eliminate the PUD zoning classification because of its "flexibility." Additionally, Mrs. Poole noted that the amount of fill required on this property will destroy the trees.

Tony Ferraro, representing the applicant, Kisco Retirement Communities, Inc., distributed a brochure about Kisco and discussed the history of the company. He reported that they design traditional neighborhood communities that bring back a sense of community. The forward porches and no curb cuts provide for a pedestrian friendly environment. Additionally, the area promotes retirement living.

Continuing, Mr. Ferraro agreed with the conditions and said they have also agreed to: increase the buffer between this property and the Bayberry Subdivision to 20' and provide a block wall with landscaping on both sides; and limit the homes along the northern edge of the property that abut Bayberry to single story.

Mr. Ferraro noted that the square footage of the homes will be 1,050 – 2,200. Mr. Contreras asked the price range and Mr. Ferraro replied from the \$100,000 - \$130,000.

Mr. Contreras asked if this community will be restricted to a certain age group. Mr. Ferraro said they view this as an active adult community; however, at this point they have not imposed an age restriction.

Mr. Contreras listed the amenities being provided for including pool, clubhouse, and tennis courts and asked if any provisions would be made for play areas. Mr. Ferraro said they can fine tune the amenities.

Mrs. Palmer said Celebration has a massive amount of green area. As a senior adult community, she noted that the proposed plan looks good; however, if it is not restricted she is concerned about space for outdoor activities. Mr. Ferraro discussed the walking

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trail and other green areas. He added that they will look at that and noted that Celebration is on several thousand acres. The purpose of this design is to provide for interaction among the residents on the street. Mrs. Palmer pointed out that the children would play in the street at the same time on-street parking is being offered.

A brief discussion followed regarding vehicular access to the rear of the properties. Mr. Ferraro pointed out the green areas on the plan for Mrs. Palmer. He confirmed that they are not planning to provide a ballpark or soccer field.

Discussion followed regarding the rights-of-way, lot sizes, setbacks, homeowners' association, and gated entry that will not be staffed.

Mrs. Poole discussed the paving of Range Road and pointed out that eventually it will be thoroughfare to Lipscomb Street. Additionally, she noted her concern with the small setback that will remain in the front of the homes.

Mr. Ferraro confirmed for Mrs. Poole that there will be enough on-street parking so approximately two cars per lot will be able to parallel park.

Scott Nickel, Bussen Mayer Engineering, elaborated on the design of the retention lakes, noted that they are not sure if each lake will have a fountain, discussed the open space requirements, sidewalks, and gazebo planned for the retention area.

Mr. Palmer said he thought the retention area would have to have a dock (as opposed to a gazebo). Mrs. Braz said she would verify this with the Code. Mr. Nickel stated that they would comply with the Code.

In response to Mrs. Poole, Mr. Nickel said they are in the process of developing the wetland mitigation plan. Mrs. Poole recommended they provide a fountain in each lake in order to keep the water moving.

Gary Vigeant, 4037 Bayberry Drive, discussed his support for the landscaped wall proposed between the two developments along with the additional buffer area. He added that the Bayberry residents are concerned that there will be street lights in the alley; they support this community being for those 55 and older; and they are concerned about the amount of traffic on Eber Road.

Mr. Contreras asked the developer if they intend to provide street lights in the alleys. From the audience, Mr. Ferraro replied no.

Mr. Vigeant concluded by saying the proposed development is far from the worst thing they could have develop next to them; the proposed development is nice.

Moved by Contreras/Walker for approval of Ordinance No. 2002-19 subject to stipulations "a – f" and the two additional stipulations proposed by the applicant.

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Mrs. Palmer said this community lacks some of the amenities that are needed, especially with regard to the common open area. If this were planned for residents 55 and older, she said she would be able to support the ordinance.

Mrs. Poole discussed her concern with the variance requests, the extension of Range Road, the bridge crossing of the canal that will be required, and the lack of green area. She noted that there will not be sufficient parking and the children will not have a place to play.

Mayor Buckley said he lives in a Planned Unit Development and he does not have a problem with it. The Code allows for it and the developer has provided some unique features, like parking in the rear.

The question was called. The roll call vote was:

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

Nay: Poole and C. Palmer.

Motion carried.

17. ORDINANCE NO. 2002-20 (CU-2002-01/SP-2002-01/TROPIC CAR WASH): (Public Hearing/First Reading) A proposed ordinance for a conditional use for a car wash on a .98-acre parcel in a C-2 (General Commercial) zoning district, located on the north side of Sarno Road east of Wickham Road and west of Peel Street. (Owner – Donald Plymel) (Applicant – Anthony Masone) (P&Z 2/21/2002)

Attorney Gougelman read Ordinance No. 2002-20 by title.

Ms. Braz briefed Council. The property is a vacant parcel located between the Wid's Bar and a retail establishment and church property. The adopted future land use is Commercial and the property has been zoned C-2 for many years. She discussed the surrounding property and zoning and noted that the applicant proposes to construct a 3,660 square foot building with two automatic washes and five open bay manual car washes.

The applicant has been granted an exemption from having to provide an Environmental Impact Assessment Report; there are no trees on the site.

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

- a. The conditional use and the proposed plan of development shall be consistent with the one-page site plan (SP-2002-01) for Tropical Car Wash, prepared by Morgan and Associates, Inc, of Melbourne, Florida, Project Number 2002-3, dated January 31, 2002.

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- 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: 1) a decrease of 5% of the open space or vegetative areas on site; 2) any increase in the number of vehicular access points shown on the site plan; or 3) any expansion of the buildings.

- c. Provide the Code-required 50 s.f. of interior landscaping for the 5 interior parking spaces.

Tony Masone, applicant, expressed concern about providing interior landscaping because it will get trampled. He explained that the project is extensively landscaped and he would agree to place the interior landscaping elsewhere on the site.

Mayor Buckley replied that Council is not able to waive this provision (it would require Board of Adjustment approval). Mr. Masone said he does not believe that he has a hardship; therefore, he will not apply for a variance and agrees with the stipulations as proposed.

Moved by Hand/Poole for approval of Ordinance No. 2002-20 subject to the conditions proposed by the Planning and Zoning Board. Motion carried unanimously.

18. FINAL PLAT APPROVAL (SD-2001-04A/PINE CREEK SUBDIVISION): (Public Hearing) A request for Final Plat approval for Pine Creek, Phase One Subdivision, on a 13.72-acre portion of a 42.07-acre parcel approved for a preliminary plat, located north of Eber Road and east of Dairy Road. (Owner – 127<sup>th</sup> Avenue Associates, Ltd., Courtelis Company) (Applicant – Elias Vassilaros) (Representative - Hassan Kamal, BSE Consultants, Inc.) (P&Z 2/21/2002)

Ms. Braz briefed Council, discussed the history of the property and the zoning. The adopted Future Land Use is Low Density Residential. The proposed first phase of the subdivision will consist of 42 lots. The first of four phases of the subdivision is consistent with the recently approved preliminary plat. Several private streets will branch from the main entrance street (Shawnee Lane) accessing to Eber Road. This street will align with the entrance to the Bayberry Subdivision at the intersection with Eber Road. A proposed retention pond (Tract D) will be located on the central portion of the plat. The pond will outfall to the drainage right-of-way to the north through an easement to be created across the remaining parcel which will become a future phase of Pine Creek Subdivision. Tracts A, B, C, and E will be used for landscaping. Tracts M and N will be landscaped islands in the center of the entrance street. Tract F will be a recreation area including a clubhouse. Tract L will be for the private streets. This is the first of four phases. All tracts will be owned and maintained by the homeowners' association.

The applicant has obtained the necessary permits from the Florida Fish and Wildlife Conservation Commission to take gopher tortoises. This was a requirement of

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preliminary plat approval. The construction plans are now under review by the Engineering Department. The applicant proposes to bond the project.

The Planning and Zoning Board recommended approval of SD-2001-04A, final plat for Pine Creek, Phase One Subdivision, consisting of a two-sheet plan, prepared by BSE Consultants, Inc., of Melbourne, Florida, dated February 4, 2002, with the findings listed in the agenda package and the following conditions.

- a. The applicant shall provide a form of surety equal to 110 percent of the construction cost as required by City Code, Chapter 29, Section 29-5 (c) (4) c. Such surety shall be in form acceptable to the City Manager and City Attorney.
- b. Provide a Stormwater Maintenance Agreement in form and substance acceptable to the City Manager and City Attorney.
- c. Provide a recent title opinion in accordance with City Code.
- d. Any change to the Final Plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the final plat includes, but is not limited to: a) any increase in the number of lots; b) a change to the street network; or c) a change in the ownership status of the private streets.
- e. Provide easements for drainage outfall and temporary cul-de-sacs. Provide an executed water and sewer agreement.
- f. Provide proof of payment into the bikeways/sidewalk trust fund as required by the preliminary plat.

Attorney Gougelman elaborated on the bill of sale for the water and sewer lines for Mr. Palmer. He noted that the document will transfer title to those pipes.

Mrs. Palmer said that Tract D will be utilized for water management purposes. She asked for an explanation. Mrs. Braz said it will be a retention area.

Mrs. Walker said she drove past the site and noticed the trees knocked over and piled up.

A brief discussion followed regarding whether the mulched trees, etc. can be used as fill.

Hassan Kamal, B.S.E. Consultants, stated that they have no objections to the conditions. He explained that generally mulch is not suitable for roadways or structural fill. Sometimes they use it in the landscaped areas. The contractor may haul it off, sell it, or bury it in the landscaped berms.

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Mr. Contreras asked what recreation is planned for Tract F. Mr. Kamal said a small pool and cabana area overlooking the lake.

Moved by E. Palmer/Walker for approval of SD-2001-04A subject to the conditions proposed by the Planning and Zoning Board.

Mrs. Poole discussed her concern with the amount of trees that will be cut down and the danger involved with allowing too much water to run off of property.

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

19. SITE PLAN APPROVAL (SP-2002-03/MELBOURNE HARBOR CONDOMINIUMS): (Public Hearing) A request for site plan approval for a 12-unit condominium building on a portion of the redeveloped Melbourne Harbor Complex located on the south extension of Front Street on the west side of a driveway extending from the south end of Front Street. (Owner/Applicant – Melbourne Investments, L.L.C.) (Representative – Luke Miorelli, M.E. Construction, Inc.) (P&Z 2/21/2002)

Ms. Braz briefed Council and discussed the history. The property has a medium density residential land use and is zoned R-2 (One-, Two- and Multiple-Family Residential). The property to the north and the east is also zoned R-2 while the parcel to the south is zoned C-2 (General Commercial). Crane Creek forms the west property boundary. A four-story residential condominium is located on the parcel immediately to the north. The property is located in the Downtown Redevelopment Area.

The site plan identifies the location, type and size of the building proposed for the property. Only 12 units are proposed with this plan. This is a 12-unit reduction from the original plan approved in 1983. There is only one tree on the site and the applicant has requested and been granted an exemption from having to provide an Environmental Impact Assessment Report. The plan also provides paved driveways including 24 parking spaces in a garage under the building and four spaces on a surface lot on the east side of the building.

The Planning and Zoning Board recommended approval of SP-2002-03, site plan for Melbourne Harbor Condominiums, as prepared by M. E. Construction, Inc., of West Melbourne, Florida, consisting of a one-sheet plan with Job Number 30201, with the findings listed in the agenda package and the following conditions:

- a. Any change to the site plan will require reevaluation of the plan by the City Engineering and Planning and Economic Development Departments. Any substantial change to the plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change includes, but is not limited to: 1) a decrease of 5% or more of open space or vegetative areas on the site; 2) a 10% or more increase in the number of units; or 3) a change in the building setbacks not approved by variance.

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b. Approval must be obtained from the Downtown Architectural Review Board.

In response to Mrs. Poole, Mrs. Braz will investigate a 1983 condition, which requires (traffic) directional arrows to be provided.

Luke Miorelli, representing the applicant, agreed with the stipulations. He confirmed for Mrs. Poole that they will work within the height limitation.

Moved by E. Palmer/C. Palmer for approval of SP-2002-03 subject to the conditions proposed by the Planning and Zoning Board. Motion carried unanimously.

20. PRELIMINARY PLAT APPROVAL (SD-2002-01/PEACHTREE LANDING SUB-DIVISION): (Public Hearing) A request for preliminary plat approval for Peachtree Landing Subdivision on a 15.3-acre portion of an existing platted subdivision, located on the east side of John Rodes Boulevard, north of the intersection of Eau Gallie Boulevard. (Owners – Elting Storms, Trustee c/o Glen Outlaw Realty Co., Inc. and Buz Underill, Trustee c/o Montreal Limited) (Applicant – Forte Macaulay Development Consultants, Inc.) (Representative Massimo Bosso.) (P&Z 2/21/2002)

Ms. Braz briefed Council and discussed the history of the property. The property is zoned R-1B and the adopted Future Land Use is Low Density Residential. A previous request for a preliminary plat, which required a variance, was denied on January 3, 2002.

The property and the proposed subdivision will consist of 64 lots (4.18 units per acre) with three proposed streets – one extending east from John Rodes Boulevard (Decator Circle), one internal cul-de-sac (Stone Mountain Court) and a street stub extension to the Mosley Road right-of-way. A proposed retention pond (Tract C) will be located on the south central portion of the plat. The pond will outfall to the drainage ditch in the John Rodes Boulevard right-of-way to the west. Tracts A and B will be used for landscaping areas and a subdivision entrance sign. All tracts will be owned and maintained by the homeowners' association except tracts D and E, which will be retained by the developers.

With the previously considered preliminary plat, the applicant had requested a variance from the City Code requirement to connect to existing streets. The applicant has redesigned the subdivision to comply with the City's subdivision regulations. The developers of Magnolia Lakes were granted a variance from not having to provide a connection to adjacent vacant property including the Mosley Road right-of-way. Mosley Road is an undeveloped street right-of-way that terminates at the southeast boundary of the proposed plat. This street extends south to Eau Gallie Boulevard. If developed, the street will provide an alternative access to the subdivision as well as provide access to the adjacent, but still undeveloped, commercial tracts located on either side of the street.

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

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A drainage swale and piped drainage system will be provided along the rear yards of the lots on the north side of Decator Circle. This drainage will collect both rear yard and off-site stormwater entering the property and convey it to the stormwater pond (Tract C). This should alleviate the potential for flooding or trapping of stormwater between the lots in this subdivision and the adjacent Cypress Bend Subdivision and address the concerns raised by staff during the prior consideration of Peachtree Landing. The westerly one-half of the subdivision is now in a flood zone. Should all or a portion of the property no longer be located in a special flood hazard area after completion of construction, the applicant should file a map amendment with FEMA to accurately reflect the flood zone classification as a result of new construction.

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

The Planning and Zoning Board recommended approval of SD-2002-01, Preliminary Plat for Peachtree Pointe Subdivision, consisting of a one-sheet plan prepared by William Mott Land Surveying Inc., of Satellite Beach, Florida, with Drawing Number 2010459, with the findings listed in the agenda package and the following conditions:

- a. The applicant shall make payment into the Bikeways/Sidewalk Trust Fund for the length of the subdivision boundary abutting John Rodes Boulevard. Said trust fund payment shall be used to offset the construction costs of a sidewalk/pedway along John Rodes Boulevard, north of Eau Gallie Boulevard.
- b. Any change to the preliminary plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the preliminary plat includes, but is not limited to: 1) any increase or decrease in the number of access points including public or private streets to or from the subdivision, or 2) an increase of more than two lots.
- c. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.

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- d. Upon completion of the subdivision improvements, the applicant/developer shall file a map amendment with the Federal Emergency Management Agency to correctly identify the flood zone designation/elevation of the property as a result of the improvements. Copies of the changes approved by FEMA shall be provided to the City of Melbourne Planning and Economic Development and Engineering Departments and Code Compliance Division.

Staff believes an additional condition clearly stating the drainage requirements along the northern boundary of the subdivision (the boundary with Cypress Bend) should be included as follows:

- e. The north private drainage easement must be piped with yard inlets approved by the City Engineer.

Max Bosso, 1688 W. Hibiscus Boulevard, reported that they are consistent with the city regulations; the adjacent uses have similar characteristics; and they agree with the stipulations.

Mr. Palmer asked why the developer is holding Tracts D and E. Mr. Bosso explained that they may propose one additional lot in the future. He added that is a common practice for corner lots.

Mrs. Poole pointed out that the area is in a flood zone. She asked how this will affect the insurance. Mr. Bosso replied that once the fill is placed on the site, the property will be raised above the flood zone. Mrs. Poole asked if that will affect Cypress Bend and Mr. Bosso responded no. He noted that the drainage will be interconnected through pipes, which will help the Cypress Bend flooding situation.

Mrs. Poole asked what will be done with the trees that are killed. Mr. Bosso said they will be mulched and buried in the side slopes of the pond.

In response to Mrs. Poole, Mr. Bosso said they have a permit from Fish and Wildlife for removal of the tortoises. He added that they have been relocated to an area in South Brevard County by Biological Research and Associates. He agreed to provide Mrs. Poole with a copy of the invoice for relocation of the tortoises.

Mrs. Palmer asked if by holding on to Tracts D and E, the developer can ask the city to vacate Mosley Road. This will return the layout of the development to the way it was originally when denied by Council. Mr. Bosso said they do not own any land adjacent to Mosley; therefore, they would not be able to petition for its vacation.

Mrs. Palmer pointed out that these are the same developers that received a conditional use (for a transfer station) from the city and then sold the property to the county. She added that as far as she is concerned, they pulled the wool over the city's eyes. Continuing, Mrs. Palmer added that she is not sure that the drainage on this site will work, especially since the property will be built up higher than the surrounding property.

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Additionally, since she does not know what they intend to do with Tracts D and E she is not willing to take their word.

Attorney Gougelman pointed out that Tract B is also not identified. A brief discussion followed.

Moved by E. Palmer/Hand to postpone this item until the next meeting to allow the developer time to provide clarification on the use of Tracts B, D, and E and whether they will be conveyed to the homeowners' association. Motion carried unanimously.

21. PRELIMINARY PLAT APPROVAL (SD-2002-02/EAGLE LAKE EAST SUBDIVISION): (Public Hearing) A request for preliminary plat approval for Eagle Lake East Subdivision on a 47.49 acre parcel zoned PUD (Planned Unit Development), located on the west side of Lipscomb Street, south of Pirate Lane. (Owners – PRN Real Estate and Investments, Ltd., and BML Investments) (Applicant – Eagle Lake Two Development Company) (Representative-Massimo Bosso) (P&Z 2/21/2002)

Ms. Braz briefed Council, discussed the history and the land use. She noted that the proposed subdivision will consist of 206 lots (4.34 units per acre) with one street extending east from the existing Eagle Lake II Subdivision to connect with Largo Drive and Cayman Drive. Mount Carmel Lane will be extended from Eagle Lake II and two new streets will be provided with the plat as well as a connection to Tarpon Way. Tarpon Way will eventually become the east leg of the Sun Lakes Road extension. This roadway cannot be extended from the existing terminus to the west because of the presence of an eagle's nest.

Since the streets will be somewhat long as blocks are concerned, traffic-calming features are proposed along these long tangents of the streets to control speed or the potential for higher speeds. The blocks comply with the requirements of Code, however, without the traffic calming features there would be long sections of straight streets. Once the streets are extended, they will connect to Largo Drive and Cayman Drive and provide an alternate access way for traffic to access Lipscomb Street and Pirate Lane, not only for this subdivision but also for the existing subdivisions to the west. Residents of these existing subdivisions frequently express concerns about safety in having to exclusively use the Babcock/Sun Lakes Road intersection in order to leave their neighborhood.

The subdivision will be developed in two phases. Phase I, which includes the northerly portion of the development, will contain 103 lots. Phase II will consist of the southerly 103 lots. The retention and drainage system will be developed as part of Phase I. Tract B will be used for landscaping areas and an entrance sign. Tracts A and C will be used as landscape buffers. Tracts H, G and F will be used as retention ponds with pier extensions into the water within a common area corridor that will permit the retention ponds to be counted as meeting one-half of the Code-required useable open space. A drainage swale will be constructed within Tract I. This tract will contain a recreation walkway, similar to the one constructed with Eagle Lake II Subdivision and be included as part of the Code required useable open space. Tract J is for an existing sewer lift station and Tract K is for additional road right-of-way. All tracts (except J and K) will be

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owned and maintained by the homeowners' association. The existing Lakeside Recreation Area is not slated for a recreation use area for this subdivision.

This plat and the previously approved and platted Eagle Lake II will result in a reduction of 391 units, or a 54% reduction in the density previously approved on the property.

A sidewalk exists along Lipscomb Street but is not in the right-of-way. A 20-foot easement will be provided for the existing public pedway that was constructed as part of Lipscomb Street, but is actually located on private property. A landscape/buffer tract (Tract A) will be created between the Lipscomb Street and the rear lot lines of lots along Mount Carmel Lane.

The Environmental Impact Assessment report indicates that the site is primarily a scrubby pine flatwoods with a thick understory of palmettos. The subdivision will require fill dirt, which will result in the removal of the existing vegetation including the pines and palmettos. Seven gopher tortoise burrows were found on the property. It is thought that up to 20 tortoises are located on the site. Removal or taking of these tortoises will require a permit from the Florida Fish and Wildlife Conservation Commission.

The Planning and Zoning Board recommended approval of the preliminary plat for Eagle Lake East Subdivision, consisting of a two-sheet plan prepared by William Mott Land Surveying, Inc., of Satellite Beach, Florida, with the findings listed in the agenda package and the following conditions:

- a. Any change to the preliminary plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the preliminary plat includes, but is not limited to: 1) any decrease in the number of access points including public or private streets to or from the subdivision; or 2) an increase of more than five lots.
- b. The owner/developer shall provide a detailed gopher tortoise survey and any necessary permits from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development
- c. Provide traffic calming design to limit the speed of traffic through the subdivision.

Staff believes it would be appropriate for the developer to pave Tarpon Way from Lipscomb Street to the entrance at the time Phase II is developed and that an additional condition of approval should be added, as follows:

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- d. Pave Tarpon Way from Lipscomb Street to the connection at Collinwood Drive prior to final plat of Phase II.

Mrs. Poole asked how they arrived at the figure of 391 as the reduction in units. Mrs. Braz replied that they changed the number of lots; therefore, the reduction is actually 389.

Mrs. Poole stated that the development will destroy wildlife. She asked how this will promote the public health, safety, and welfare. Mrs. Braz responded that the development is in compliance with our Comprehensive Plan.

Mr. Palmer said he did not understand how Tract D could be part of the open space calculations when it will be retained by the developer. Mrs. Braz said it will have to be conveyed to the homeowners' association to meet the open space requirements. Attorney Gougelman said it needs to be clear what will be done with Tracts D and E because this document will be recorded in the public records. Mrs. Braz pointed out that this is preliminary plat approval; therefore, the document won't be recorded.

Mrs. Palmer pointed out that these are the same developers that obtained a conditional use from the city for a transfer station and then later sold the property to the county.

Max Bosso, representing the applicant, stated that they will convey as much land as necessary to the homeowners' association to meet the open space requirement.

Mr. Bosso noted that he just learned about stipulation "d." This was not a stipulation at the Planning and Zoning Board meeting. He said his first response is that the City Code requires them to stub out to the right-of-way and they have done that. Because the Code does not require them to pave a city road, he does not agree. However, he added that it seems he is in a bad position simply because he works for Forte Macaulay. Continuing, he said he would like to amend "d" to require that the stub out street align with Mount Carmel. That would require building 120' of right-of-way as opposed to 800'.

Mr. Hill said he thought the city was being reasonable in not requiring the entire street to be paved.

Mrs. Poole recommended the item be postponed until the next meeting to allow the developer time to answer Council's questions. Mrs. Palmer suggested the item be denied if the applicant is turning down one of the stipulations.

Mr. Bosso stated that he would accept stipulation "d" as written. Additionally, in response to Mr. Palmer, Mr. Bosso said he would convey Tracts D, E, and F to the homeowners' association. Mrs. Palmer asked about Tracts G and H and Mr. Bosso replied yes if they are required to meet the open space requirement.

Following a brief discussion, Mr. Palmer noted that Tract D indicates that it is 3.7 acres, yet on the plan it looks like it is 28' wide. Mrs. Braz said the applicant brought in a new

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plat with all the tracts re-lettered. Mayor Buckley said there are too many items that need to be clarified.

Moved by E. Palmer/Poole to postpone this item until the next meeting to allow time for the developer to clarify conveyance of the tracts and provide staff time to verify the tracts and their acreage against the notes on the plat. Motion carried unanimously.

At this time (12:00 a.m.), Council agreed by consensus to continue the meeting.

22. COUNCIL ACTION RE: A request for a waiver of the six month waiting period to reapply for a conditional use of the Registry Apartments. (Requested by Deion R. Lowery)

Moved by Hand/C. Palmer to waive the six-month waiting period to reapply for a conditional use for the Registry Apartments. Motion carried unanimously.

23. COUNCIL ACTION RE: Consideration of various Redevelopment District matters.

Council convened as the Babcock Street Community Redevelopment Agency to discuss the following item:

- a. Discussion of a proposed increase in City payment of a brokerage fee from 4% to 6% for the sale of the former Palms 8 Theater site.

The Babcock Street Redevelopment Agency Advisory Committee voted unanimously at their January 23 meeting to request that the City Council reconsider the broker commission fee, which was set at 4% at the January 3 City Council meeting. The committee recommended a commission fee of at least 6%.

The members feel that normal commercial brokerage fees are in the range of 6% to 10% and that a lower rate of 4% may discourage brokers from wanting to bring a buyer based on a lower commission. In discussion with several local commercial brokerage firms, they have confirmed that 6% to 10% is a typical brokerage commission fee for commercial properties.

Moved by E. Palmer/Walker to set the fee at 6%. Motion carried. Council Member Poole and Vice Mayor Hand voted nay.

At this point, Council convened as the Olde Eau Gallie Riverfront Community Redevelopment Agency to consider the following item:

- b. Request for approval of a lease agreement between Joseph Flammio and the Olde Eau Gallie Riverfront Community Redevelopment Agency for parking in Downtown Eau Gallie.

The advisory committee is requesting the approval of \$3,077.31 from the Eau Gallie Redevelopment Fund to continue to lease the property from Joseph Flammio at the northeast corner of Eau Gallie Boulevard and Highland Avenue for public parking.

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The cost is to cover the taxes on the property. The City Attorney contacted the Property Appraiser to determine if taxes should be levied if the property was used for a public purpose but was unable to get a tax waiver. In addition to allowing parking on the site and public events, the property owner had offered a right of first refusal should the owner put the property up for sale.

Moved by Hand/Contreras for approval. Motion carried unanimously.

Council reconvened as the City Council to finish the agenda.

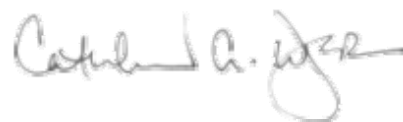
24. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Following a brief discussion, Mr. Hill said he will contact each Council Member to determine available dates to schedule a budget workshop meeting.

25. ADJOURNMENT

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

The meeting adjourned at 12:09 a.m.



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City Clerk – 3/22/2002

Approved by Council: \_\_\_\_\_