

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 14, 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. Reverend Pastor Richard A. Phelps, Hope 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
	Bill McCord	Planning and Zoning Administrator

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented the following proclamations:

“National Safe Boating Week”, May 18-24, 2002; accepted by Pat Monahan, Flotilla Commander, and Jim McGuinness, Public Affairs Officer, U. S. Coast Guard Auxiliary, South Brevard Flotilla 42.

“VFW Buddy Poppies Days”, May 24-27, 2002; accepted by Chris Pilger, Senior Vice Commander, VFW Post 3991.

Mayor Buckley also presented a Beautification Award to Sarno Complex, 2112 Sarno Road; accepted by Christopher Roll and Degory Roll, Palm Gardens Nursery and Landscaping.

5. APPROVAL OF MINUTES – April 16, 2002 Special meeting and April 23, 2002 regular meeting

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

6. CITY MANAGER’S REPORT

Mr. Hill referenced the additional information distributed to Council regarding landfill issues (odor complaints and property acquisition) and the initial negotiation discussion with IAFF (firefighters’ union).

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Mayor Buckley reported that the City of Melbourne has been selected as the site for a media event for the release of the Florida census figures. The figures will be released on May 23, 10:00 a.m., Chamber of Commerce.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. RESOLUTION NO. 1725: A proposed resolution supporting the Manatee Protection Plan developed by the Florida Fish and Wildlife Conservation Commission. (Postponed by Council 11/13/2001)

Attorney Gougelman read Resolution No. 1725 by title.

From the agenda report: On November 13, 2001 Council voted to postpone this item until the administrative law judge considering the matter made a ruling. The following motion remains on the floor from the October 9, 2001 meeting:

“Moved by Poole/E. Palmer for approval of Resolution No. 1725.”

On April 17, 2002 the Administrative Law Judge, Fred L. Buckine, rejected all challenges and executed an order in favor of the Manatee Protection Plan.

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

9. RESOLUTION NO. 1760: A proposed resolution for approval of an Easement and License Agreement for the Causeway Office Center. (Postponed 4/23/2002)

Attorney Gougelman read Resolution No. 1760 by title.

Mr. Hill briefed Council. This item was postponed at the April 23 meeting to allow Council time to review the various changes by the attorneys to the agreement. The site plan and conditional use for the Causeway Office Center were approved on January 8, 2002 with a stipulation that the conditional use/site plan would not be effective until an agreement was provided regarding the relocation of the easement for the trysting steps/bluff walk.

The proposed agreement has been revised to mirror the requirements of Ordinance No. 2001-62. The changes include clarification of the language regarding public parking.

The agreement provides that the city would release any claim to the 1892 easement and/or any prescriptive easement that has developed over the years. In exchange for this release, the owner/developer agrees to relocate the easement with a memorial easement that would run from New Haven Avenue through the Causeway Office Center garage to Strawbridge Avenue. The owner/developer further agrees to provide a commemorative plaque at both ends of the easement; to allow public parking in the

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Causeway Office Center garage during off-business hours and weekends; and to allow limited public use of the top deck of the Causeway Office Center for viewing.

Following Council's request at the last meeting, the applicant considered relocating the trysting steps to the west side of the property. Although he is not opposed to doing this, it would require modification of the ordinance granting the conditional use. This would require a public hearing before the Planning and Zoning Board and two public hearings before Council. Because of the time involved, the applicant is asking Council to approve the agreement as written with the walkway easement through the garage.

Gary Frese, attorney representing the applicant, said that he spoke with several Council Members regarding moving the trysting steps to the west. This would require them to start the process over. The public parking hours are clear in the current agreement; therefore, the applicant would like to move forward.

Mrs. Poole said she would like to hear that the steps will be moved to the west. Mr. Frese said the move to the west is workable; however, whether that is preferable is up to Council. He stressed that time has become a factor so they would like to leave the steps as proposed in the ordinance. This is the best location and will serve the public best in terms of recognizing history.

Dr. Hynes, applicant, said they want to move forward with the ordinance as written; however, he will make a commitment to re-work the plan in any manner Council wishes to consider.

Mr. Contreras asked the cost involved in modifying the plans to move the steps west. Dr. Hynes replied \$20,000 - \$50,000. He added that the cost is worth it to him if the move promotes harmony.

Mrs. Hand asked if the Strawberry Mansion would object to this change. Mrs. Poole stated that she spoke to Bob Brown (Strawberry Mansion) about this and he said he likes the idea.

Mrs. Palmer asked if it is possible for Council to adopt the agreement in the package, yet have the location of the trysting steps remain open.

Attorney Gougelman said yes; however, he noted that by approving the agreement at this meeting, a specific plan will be in place for development of the site. The applicant can exercise his rights to move forward. The plans show the trysting steps memorial easement through the parking garage. He added that we can go back and modify the conditional use and agreement if the applicant is amenable.

Attorney Gougelman confirmed for Mrs. Poole that a change would require the item to go through the process again. A specific site plan was approved by the ordinance and significant changes to that plan are being discussed.

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Dave Menzel, representing the applicant, proposed a five-foot easement on the west side of the property, which would give 24-hour access from New Haven Avenue. He stated that it fits and it works. Unfortunately, this change would require them to start over.

Mrs. Poole asked what assurance Council will have that the steps will be moved. Mr. Menzel replied that Dr. Hynes has indicated it will be done.

Mrs. Palmer asked if the public would lose the view from the Causeway Center and the right to access the parking garage if the trysting steps are moved.

Mr. Menzel said that in the normal course of the day, the facility will be open; therefore, he does not believe anything will be lost.

Attorney Gougelman said he does not see the right of the public to use the top deck for viewing as going away.

Mrs. Walker pointed out that the applicant did not pursue the easement and license agreement until after Attorney Gougelman contacted him. She said there does not seem to be a real rush on the part of the applicant to get the project completed. Mrs. Walker stated that she is not in favor of approving something without it being specifically what Council wants.

Mayor Buckley said he has enough faith in the applicant and therefore is in favor of the change.

Mr. Palmer agreed and said this will provide the best of two worlds. Council should concur with this and trust that it will be resolved.

Moved by Contreras/E. Palmer for approval of Resolution No. 1760.

Mrs. Poole pointed out several areas of the agreement that relate to the parking, signage, deck, etc. Additionally, she noted that the resolution in the package indicates that Council considered it on April 23. Attorney Gougelman agreed that the date in the resolution needs to be changed to May 14.

With regard to Mrs. Poole's concerns about the reference to the public parking, signage, etc. in the agreement, Mr. Gougelman said the agreement will determine how the easements (through the garage and viewing area) are implemented. Mr. Hill added that regardless of whether the steps are moved, the city will want to retain the easement referenced in the agreement. Attorney Gougelman added that if the steps are moved to the west, an amendment to the agreement will return to Council.

The maker/seconded agreed that the date in the resolution (last recital clause) should be changed to May 14.

The question was called on the motion, which includes the date change. Motion carried unanimously.

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10. ORDINANCE NO. 2002-29 (A&V #239): (Public Hearing/Second Reading) A proposed ordinance to abandon and vacate a 10' alley adjacent to Lots 227–241 in Nieman Heights Subdivision. (Requested by Foster Burdette) (First Reading 4/23/2002)

Attorney Gougelman read Ordinance No. 2002-29 by title. There were no public comments.

Moved by Walker/Hand for approval of Ordinance No. 2002-29. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2002-31 (LDR-2002-01): (Public Hearing/Second Reading) A proposed ordinance to amend the parking regulations to require limiting 10-foot parking spaces only to employee parking. (Requested by City Council 1/22/2002) (First Reading 4/23/2002)

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

Moved by Poole/Hand for approval of Ordinance No. 2002-31. 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: Amendment No. 2 to Task Order 2 for services during construction, Lake Washington Surface Water Treatment Plant Improvements, Project C97371, CH2M Hill, Orlando, Florida - \$67,320.

Mr. Hill briefed Council. This is a proposed amendment to the CH2M Hill contract for the Surface Water Treatment Plant. This amendment will extend the time for which the engineers must provide engineering services needed to administer the construction contract.

The contractor, Poole and Kent Company, will not complete the project by May 16, 2002. This is also the date which defines CH2M Hill's providing construction related services. CH2M Hill's contract will have to be extended. Staff is recommending that this amendment cover an extension of up to 60 days.

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CH2M Hill's proposed fee for services during construction is based on the original contract amount for which a pro-rated, day-rate charge of \$1,122 has been calculated. For the estimated sixty days in this amendment, the not-to-exceed fee is \$67,320.

Poole and Kent will be subject to liquidated damages for every day the project is not completed beyond the scheduled completion date. However, the contractor has submitted claims for additional days that could extend the completion date.

CH2M Hill and Utility Administration staff are reviewing all the claims and records to determine how much of the contractor's request for additional days is acceptable. If the contractor's time is not accepted and not extended by change order, liquidated damages of \$1,000 for every day beyond the scheduled completion date will be withheld from the contract amount. This can be applied towards the cost to retain CH2M Hill for those additional days. Any balance will have to be funded from the project's construction contingency.

Moved by E. Palmer/Poole for approval of the amendment to CH2M Hill's contract to provide continued services during construction for a period of up to 60 days at a cost not to exceed \$67,320. Motion carried unanimously.

13. COUNCIL ACTION RE: Change Order No. 1 to contract for Pineapple Avenue sidewalk improvements, Project No. 00201, Santa Cruz Construction, Meritt Island, FL - \$86,652.92.

Mr. Hill reviewed the agenda report. The proposed change order consists of two items:

- The section of sidewalk between Carissa Place and Hiawatha Street was to be placed in a location west of an existing drainage area to avoid modifying the drainage. Once the location was staked for construction the adjacent property owners voiced concerns about the distance between the sidewalk and their homes. The change order authorizes the contractor to modify the existing drainage and place the sidewalk closer to the street. Additional cost for this work is \$10,791.30.
- Staff feels that it is most cost effective to use the contractor currently on site and continue the project from Hiawatha Street north approximately 700 feet to connect with the Ascension Elderly Housing Community. This work was listed as bid alternate two on the original contract. The cost for this work is \$75,861.62.

The combined total for both items is \$86,652.92. All costs are based upon contract unit costs. The contractor will have 60 additional days added to facilitate the construction.

Moved by E. Palmer/Contreras for approval of the change order. Motion carried unanimously.

14. COUNCIL ACTION RE: Consent Agenda

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Moved by Hand/Walker for approval of the consent agenda.

Mr. Hill responded to Mr. Palmer's questions regarding item "a." The item was not removed from the consent agenda.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Sixty-three month lease of two Toshiba E65 and one Toshiba E45 Digital Systems for the Police Department, Toshiba Business Solutions, Ft. Pierce, FL - estimated cost \$61,929.
 - b. A request for consideration of proposed allocation to Brevard County of Florida Department of Community Affairs Federal Drug Control and System Improvement Program (Edward Byrne) funds totaling \$353,035 for FY 2002/2003.
 - c. Change Order No. 1 to contract for D. B. Lee Wastewater Treatment Plant Phase III Improvements, Project No. 96373, Wharton-Smith, Lake Monroe, FL - \$38,641.
 - d. Amendment No. 4 to contract for Services During Construction at D. B. Lee Wastewater Treatment Plant, Phase III Improvements, Project No. 96474, Hazen and Sawyer, Boca Raton, FL - \$7,032.
 - e. Right-of-way Use Agreement with Alexie, Inc. to allow part of the building housing the Continental Flambe Restaurant (936 E. New Haven Avenue) as well as new improvements to its facade to encroach onto the public right-of-way.
15. COUNCIL ACTION RE: Supplement No. 105 to continuing consultant contract for Fire Station No. 74, Project No. 02113, Frazier Engineering, Inc., Melbourne, FL - \$49,500.

Mr. Hill briefed Council. At the March 26 meeting, Council directed staff to proceed with negotiating a fee proposal for engineering services needed to design and construct a new fire station near the corner of Hibiscus Boulevard and Hickory Street.

The proposed fire station will be approximately 7,100 square feet. It will have three bays and space for additional firefighters. (Fire Station No. 77 at BCC is 4,400 square feet.) The station will be equipped with a back-up generator. The estimated cost for the building is \$476,600. This does not include site work or contingency.

The proposed fee is \$49,500 for engineering and architectural services from design through the construction phase. The design will be completed within six months. Herb Sands will be the architect, John Frazier will be the structural engineer, and the firm Sklow & Runkel will provide mechanical/electrical engineering services. City staff will design the site work.

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Mrs. Poole asked how the costs compare with the last station that was built. Mr. Hill said basically proportional. He pointed out that this is for a larger, three-bay station. Mr. Ralls agreed.

Mr. Contreras asked the timeframe for the station to be operational. Mr. Ralls said 14 months – six months to design, two months to bid, and six months to construct.

Mr. Hill confirmed for Mrs. Poole that Council specifically provided funding for this station from sale of the property off Hickory Street. Mrs. Poole said she is in favor of the fire station; however, not at this location. She added that the property was donated by the Wells family and was supposed to remain a green area.

Moved by Hand/E. Palmer for approval of Supplement No. 105 to Frazier Engineering's continuing consultant contract in the amount of \$49,500. Motion carried. Mrs. Poole voted nay.

16. RESOLUTION NO. 1761: A proposed resolution authorizing application to the Department of Justice for the Community Oriented Policing Services Hiring Grant Program for FY 2002 funding.

Attorney Gougelman read Resolution No. 1761 by title.

Mr. Hill briefed Council. The city has an opportunity to apply to the Department of Justice for the Community Oriented Policing Services hiring grant program for FY 2002 funding. The Universal Hiring Program (UHP) enables state and local law enforcement agencies to hire new police officers that will perform community-policing activities. The city has participated in this grant in the past, but in the last several years has declined to submit an application. Due to demands on the department, it may be time to reconsider use of this grant.

Shown as unfunded needs in last year's budget, the department is seeking the creation of a Traffic Enforcement Unit and a Drug /Prostitution Unit. The department is submitting these items again as personnel program improvements in the FY 2002-03 Budget. The deadline for the UHP grant application is prior to the consideration of budget requests recommended by the City Manager and review by Council. If Council is going to consider funding additional officers, the grant would be a way to offset costs.

Should Council ultimately decide not to fund additional officers, the grant could be declined. Submission of the grant request would allow full consideration as a part of the upcoming budget presentation and review. As has been discussed on many previous occasions, adding the additional officers, particularly by means of the COPS UHP grants obligates the city to maintain the positions.

The Melbourne Police Department has suggested options to hire four new officers to form a Traffic Enforcement Unit and five new officers to form a Drug/Prostitution Unit at an estimated total cost of \$1,168,058.05 over a three-year period. The UHP program pays up to 75% of entry level salary and benefits for newly hired additional police officers, with

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a maximum of \$75,000 per officer. Therefore, the UHP application will require \$493,058.05 from the General Fund over three years if the total grant is awarded; less if the other options are selected. Only one application may be submitted. The grant application deadline is May 24, 2002 for priority consideration and has a final deadline of June 21, 2002.

Because the grant funds are capped at \$25,000 per officer, per year, the city will actually need to pick up more than the apparent 25% match (the grant says a 75/25 split). The estimated city share per year is approximately 42% during the grant years then 100% of the cost thereafter.

Mr. Hill added that it is unrealistic to expect that the city could add nine officers, even grant funded positions, in one year. That is why it has been broken into components.

Mr. Hill confirmed for Mr. Palmer that the grant can only be used to hire officers. It does not address additional equipment needs for new officers. Mr. Hill added that there is a future grant opportunity for equipment.

Mr. Palmer asked if the city could utilize a 2/2 unit as opposed to a 4/5 unit. Deputy Chief Jim Reynolds replied that a two-officer unit would not be effective. The unit would have to be supplemented with overtime or from other shifts on a temporary basis. Following a brief discussion on the use of special units, Chief Reynolds said that in order to meet our goals, a unit of four or five officers would have to be assembled. He added that such a unit would be used to address all three issues (traffic, drugs, and prostitution).

Based on the increase in crime, Mrs. Hand said she feels the Police Department needs all the help it can get. She added that it would be wise to approve the request at this time because Council can change its mind later by declining the grant.

Mrs. Walker asked the equipment costs involved if we proceed with four additional officers. Chief Reynolds explained that since the fleet at the Police Department has been expanded, they are experiencing lower mileage and less maintenance. The recommendation would be to retain vehicles that might be scheduled to leave the fleet. That would result in the increase to the fleet being incremental as opposed to sudden.

Mrs. Walker added that there would also be a cost for uniforms, etc. Mr. Hill agreed and added that the source of those funds would be the General Fund.

Chief Reynolds confirmed for Mr. Contreras that more experienced officers would be directed to the special unit/units. The new officers would take their place on the road.

Following a brief discussion about vehicles, Mr. Hill said at a minimum we are looking at one new vehicle for two officers.

Mr. Hill explained for Mrs. Palmer the 75/25 "split." He noted that because our officers make more than the Department of Justice figures, the city would need to pick up more than the 25% match. The table in the package lists the actual cost for the city.

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Mrs. Palmer said this is the tail wagging the dog. Instead of deciding to hire officers, we identified a funding mechanism first. Mr. Hill said if that is how the item is portrayed, it is not accurate. That is why the Police Department tied the grant to something they have identified as a need in the budget.

Discussion followed regarding ratio of officers to citizens, the city's rate of pay, and traffic enforcement.

Moved by E. Palmer/Poole for approval of Resolution No. 1761 (option 1 – four officers).
The roll call vote was:

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

Nay: Buckley

Motion carried.

Mayor Buckley said once the officers are hired, we would never be able to eliminate the positions.

Recessed: 9:08 p.m.
Reconvened: 9:18 p.m.

17. ORDINANCE NO. 2002-32 (A&V #251): (Public Hearing/First Reading) A proposed ordinance to abandon and vacate the southern 2.5 feet of a public utility easement along the north property line of Lot 8, Block C, Cresthaven Homes Subdivision, Section 1. (Requested by Bridgett Sutphin)

Attorney Gougelman read Ordinance No. 2002-32 by title.

From the agenda report: The applicant constructed a carport without obtaining a building permit, thus becoming a Code Compliance issue. A building permit cannot be obtained because the carport encroaches into the utility easement. Also, as an accessory structure, the carport will require variances for setback and distance from the primary structure. The variances may be considered if the abandon and vacate request is approved.

City departments and utility companies had no objections to vacating the southern half of the five-foot wide utility easement.

With regard to encroachment of the structure, there are no existing conflicts and no future uses anticipated for the subject portion of the utility easement. Abutting property owners will be notified of the public hearing and they may come and voice their opinion. Further, the proximity of the structure to the property line must receive variance approval.

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Mrs. Hand referenced the picture in the package and said it looks like a temporary structure. Mr. Hill said he believes the applicant will have difficulty obtaining a permit for that structure.

Mr. Contreras asked if there are any fines associated with this regardless of Council's action at this meeting. Mr. Hill said that would be a Code Enforcement Board decision. The idea of code enforcement is to obtain compliance. Compliance will be achieved in this instance by removing the structure or going through the process for proper permits.

Mr. Contreras recommended that the city include actual examples, without using names, in the Melbourne Messenger about penalties assessed when building permits, variances, etc. are not obtained.

Mrs. Palmer said if this is approved, the applicant will have to go through the procedure to come into compliance. She added that she does not believe the city should be in the business of punishing the public when we have more serious issues to address.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2002-32.

Mrs. Poole questioned the variance. Mr. Hill said the applicant will have to demonstrate the hardship before the Zoning Board of Adjustment. Council's action will simply remove the encroachment.

The question was called. Motion carried. Mr. Contreras voted nay.

18. ORDINANCE NO. 2002-33 (Z-2002-923): (Public Hearing/ First Reading): A request to rezone a 10.76-acre parcel from C-1 (Neighborhood Commercial) to C-2 (General Commercial), located at the northwest corner of Babcock Street and Eber Road on the site of the former Wal-Mart. (Owner – Foothill Properties, LLC) (Applicant – Daniel A. Evans) (Representative – Ansalan Gozini) (P&Z 4/17/2002)

Attorney Gougelman read the ordinance by title.

Mr. McCord reviewed the agenda report and discussed the history and zoning on the property. He noted that the building and parking lot configuration comply with Code except that the northwest corner of the building and the loading/unloading ramps encroach onto the adjacent property. Apparently when the site was parceled, the new legal description split the building and ramp area.

Additional landscaping would be required and handicapped parking will need to be evaluated prior to release of this structure. The site contains 475 parking spaces. The City Code requires a minimum of 320 parking spaces for a 106,752 s.f. building. The operators of the entertainment center (Andretti Thrill Park) to the north have a joint parking agreement, which allows for shared parking.

The applicant is requesting the change in order to market the property for more intense activities permitted in the C-2 zoning district. The Code permits "electronic assembly and

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optical instrumentation assembly” and a number of other more intensive commercial uses that are not permitted in the C-1 zone. Years ago when Wal-Mart operated from the site, staff encouraged the owner to consider rezoning to C-P in order to allow the outdoor display to become code conforming. Outdoor storage and display, other than motor vehicles, is prohibited in the C-1 zone. Motor vehicle sales are not permitted in the C-1 zoning district. In addition, when Wal-Mart sold the property they placed deed restrictions limiting certain types of competitive retail activities from occurring on the site for 15 years.

The property is inter-linked with the rest of the originally approved shopping center site plan. The total commercial area is approximately 40 acres. The property to the north was rezoned to a more intensive commercial zoning and the land use is commercial with no residential or mixed-use designation.

The 8.74-acre parcel zoned C-1 to the west will provide a step down in zoning intensity between the subject property and the Windover Apartments farther to the west. Staff believes that this change would create more economically viable redevelopment options for the site without creating additional impacts to the area. The proposed zoning fits well with the district and preamble of the C-2 zoning. A store or single building consisting of over 100,000 square feet is more of a community commercial facility than a neighborhood commercial activity. Most commercial land in the Babcock corridor is zoned C-1 so this change would not create an inordinate amount of property zoned C-2 in the area or city-wide. The property has a significant amount of frontage on an arterial street (276') and a collector street (866').

The Planning and Zoning Board recommended approval of the rezoning from C-1 to C-2 with the findings listed in the agenda package.

Mrs. Poole asked if we typically make a change like this because somebody can't market the property.

Mr. McCord said staff looked at the proximity of uses, the changes to the South Babcock Street corridor, and the Andretti Thrill Park. C-2 zoning is discouraged in a mixed land use, but not on strictly commercial. Babcock Street is a major corridor and Eber Road will be widened in the future. The area is losing its neighborhood character.

Mrs. Poole replied that the C-1 zoning prevents a lot of uses that the neighbors may not want next to them.

In response to Mr. Palmer, Mr. McCord elaborated on the encroachment of the building. He noted that it can be addressed during the building permit process.

Mr. Palmer asked if a change in zoning would affect the parking spaces. Mr. McCord replied not likely unless it becomes an all-medical use. He noted that Wal-Mart Stores tend to over build their parking lots.

Mrs. Palmer referenced the letter in the package from Richard Riffel, owner, BridgeWater Pointe Apartments, who is opposed to the rezoning. She noted that Mr. Riffel is opposed

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to deviating from the land use plan simply because someone wishes to make their property easier to sell. Additionally, Mr. Riffel notes that without specific information on the type of business that will occupy the property, it is not in the best interest of the city to approve the request.

Mrs. Poole agreed that we should have specific information as to the type of business.

Mr. McCord explained that this is not a change to the land use plan. This is a zoning change. He added that we cannot contract for a specific use on this property.

Daniel Evans, 1688 West Hibiscus Boulevard, representing the owners, reported that he talked with the owner of BridgeWater Pointe Apartments. He noted that there are several uses that Mr. Riffel is in favor of and he did not attend this meeting to object.

Continuing, Mr. Evans said the development will have more of a regional character rather than a neighborhood character. It is an economic development issue. The property will be brought up to landscaping code and will improve the neighborhood. Assembly of optical and computer equipment will be the target market. The property will be conducive to an employment-related operation and there are a variety of uses that will be best suited with the rezoning. Mr. Evans added that he believes they have mitigated the impact to the adjacent neighborhood with the adjacent C-1 zoning.

Mr. Palmer asked if an employer has expressed an interest. Mr. Evans noted that he has a confidentiality agreement; however, they have an RFP for a 30,000 s.f. employment-related operation on the north side, which would eliminate the need for the loading dock. He added that the 106,000 s.f. will bring in more than one tenant. The adjacent use can't be competing, but it can be an optical type assembly.

There were no additional comments from the public.

Moved by Contreras/Walker for approval of Ordinance No. 2002-33.

Mrs. Palmer said she is hesitant, but will vote for this and exercise confidence in the applicant that the property won't have a negative impact and will provide employment opportunities.

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

19. SITE PLAN APPROVAL (SP-2002-08/BAYMEADOWS COMMERCIAL CENTER): (Public Hearing) A request for site plan approval on an approximate 2.4-acre parcel of a 4.17-acre site in the C-2 (General Commercial) zoning district, located on the west side of Wickham Road, north of Grand Meadows Boulevard and south of Post Road. (Owner – Harp Holding Company, Inc.) (Applicant – Bradley A. Smith) (P&Z 4/18/2002)

Mr. McCord briefed Council and reviewed the history of the property. The property was annexed in 1995 with the Baymeadows Subdivision and the commercial properties north

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and south of this site. The Commercial/Medium Density Residential land use and C-2 zoning were established at that time.

Council approved the site plan for Phase 1 on 2.77 acres adjacent to the site to the north in 2001. This phase of the center is now under construction (Atlantic Bread Company). The balance of the site has never been developed but has been cleared since development of the subdivision. The Phase 1 plan indicated that there would be a Phase 2 development but did not specifically identify the location of improvements. The approved Phase 1 consists of 3,026 sq. ft. of commercial uses, 11,889 sq. ft. of office/retail, a restaurant use consisting of 4,690 sq. ft. with 110 seats, and a 3,026 sq. ft. bank site. A total of 122 parking spaces were proposed with Phase 1.

Phase 2 will include slight modifications to Phase 1 by deleting reference to a bank and adding up to 17,780 sq. ft. for a retail/restaurant facility and three 5,310 sq. ft. buildings for retail use. The uses approved in Phase 1 are more succinctly identified. A total of 249 parking spaces will be provided with the Phase 1 and 2 improvements.

The retention basin that provides for stormwater run-off has already been constructed on the adjacent property to the west. The proposed plan provides cross-access easements with adjacent properties to improve traffic circulation and accessibility. Turn lanes have been constructed with the Phase 1 project complying with Brevard County standards. An additional joint use driveway for right-in/right-out movements will be provided at the south end of the project and via the cross-access easement, a driveway will be available at Grand Meadows Boulevard. The applicant is now looking for ways to secure an easement to College Woods Drive to gain access to a signal just to the north of the site. Like the Phase 1 plan, an easement will also be provided for the sidewalk along Wickham Road.

The site was completely cleared and filled when the subdivision was constructed. An Environmental Impact Assessment (EIA) was performed with the subdivision review. The site plan complies with the Comprehensive Plan policies, Land Development Regulations, Zoning Code and Vegetation Code.

The Planning and Zoning Board and staff recommended approval of SP-2002-08, Site Plan for Baymeadows Commercial Center prepared by Brad Smith and Associates of Melbourne, Florida, consisting of a one-sheet plan with Project No. 99-1107.2, dated 2/27/2002 and with a final revision date of 4/11/2002, with the findings listed in the agenda package and the following conditions:

- a. A change to the site plan will require reevaluation of the site plan by the Engineering Department and the 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 decrease by ten (10) percent in the amount of open space or vegetative areas on site or an increase by more than ten (10) percent in the size of the buildings as part of this plan approval.

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- b. The visual screen on the west and north shall be constructed prior to development of the site.

Mrs. Poole said Phase 2 indicates there will be a restaurant, but it doesn't indicate how many parking spaces. Mr. McCord replied that only a small portion will be a restaurant – most of the building will be office and/or retail space. He added that a couple of restaurants were approved with Phase 1.

Mrs. Poole questioned the parking and Mr. McCord said for all the uses on the site they will need 257 parking spaces. They will be providing 262 parking spaces.

Mr. McCord elaborated on the cross-access easements for the property in response to Mr. Palmer. Mr. McCord noted that essentially a service road will allow vehicles to access the different properties without entering Wickham Road. The service road meets all the requirements of an internal road.

Mr. Palmer asked about the two restaurants in Phase 2. Mr. McCord replied that one restaurant, 8,890 s.f., is proposed. The number of seats will be limited based on available parking. Additionally, a firewall provides a separation between two areas.

Mrs. Palmer asked if anyone has looked at the site to determine if it conforms to the current site plan. Mr. McCord replied yes and said it is being built in conformance with the site plan and development order previously approved by Council.

Brad Smith, 1800 West Hibiscus Boulevard, applicant, said at the time of Phase 1 it was not yet clear what would be built on the south side. He noted that everything is market driven. Mr. Smith referenced the overhead and showed the differences between Phase 1 and Phase 2. The large building that fronts Wickham Road is retail, restaurant, and office use. There is no room on the site for additional parking, so they can't have more building than the parking supports. A 4,000 s.f. restaurant is proposed and the parking calculated supports one restaurant of that size. Additional restaurants could only be achieved if some of the restaurants proposed for Phase 1 end up being office use.

Continuing, Mr. Smith pointed out the firewall that runs through the middle of the building. He noted that they have received SJRWMD approval for the stormwater. Utilities have already been provided through Phase 1. He noted that work is underway on the visual screening (reference condition "b") and he concurs with the stipulations.

A lengthy discussion followed regarding the differences between the site plan in the package and the site plan displayed on the overhead.

Attorney Gougelman attempted to clarify the matter. He explained that the blue line drawing is the zoning site plan. The overhead drawing is a construction site plan. Council is being asked to approve the blue line drawing. He added that they have moved the "bank" space south against the phase line, moved parking, and added a courtyard. Additionally, he noted that they did not have to return for approval to make those changes; conceptually they are not making any real changes.

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Continuing, Mr. Gougelman noted that on the Phase 2 plan they have shown how Phase 1 will look in juxtaposition to Phase 2.

Jack Kirschenbaum, attorney representing the applicant, noted that Phase 2 includes the entire property – including how Phase 1 is constructed.

Mr. Smith elaborated on how the property will be built.

Moved by Contreras/Hand for approval of the site plan for Baymeadows Commercial Center subject to the proposed stipulations.

Mrs. Palmer asked how many acres are in Phase 2. Mr. Smith replied 2.4 acres. Mrs. Palmer asked if the idea was to cut out small portions so they did not have to appear before Council for approval. Mr. Smith replied no and added that they did not know the market (for Phase 2) at that time.

The question was called. The roll call vote was:

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

Nay: E. Palmer and Poole

Motion carried.

20. COUNCIL ACTION RE: A request by John Briscoe to donate approximately .15 acres of property to the City located immediately east of the Eau Gallie Cemetery.

From the agenda report. This is a request to receive donated land on property adjacent to (east side) of the Eau Gallie Cemetery. Mr. John Briscoe, the property owner, obtained the property at a tax sale and feels that the property could be best utilized by the City. The acquisition of this parcel could aid in further redevelopment of the Booker T. Washington area.

Moved by Walker/Hand to accept the property to be donated by Mr. John Briscoe.
Motion carried unanimously.

21. COUNCIL ACTION RE: A request for policy decision by City Council regarding barricaded street events.

From the agenda report: In March, Council was notified about several issues regarding street events. At the September 11, 2001 Council meeting a Downtown merchant (Richard Bailey) spoke under public comments regarding his concern about the Cannabis Action Network street closing. At that meeting, Attorney Gougelman reported that due to litigation between Florida Cannabis Action Network and the City of Gainesville, the City of Melbourne would be reviewing its special activity permitting procedures.

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Previously, applicants for street events were required to submit a petition signed by a majority of the residents/businesses within a barricaded area indicating consent to not have access during an event. Attorney Gougelman advised that the petition process is not defensible and should be eliminated. He elaborated that cities should either allow all or deny all street events. The courts have referred to such a petition as being a “heckler’s veto.”

Based on the City Attorney’s advice and subsequent to dual petitions being submitted during the recent St. Patrick’s Day event, the City Clerk no longer requires petitions to be submitted with road closure applications.

At its April 4 meeting, the Melbourne Downtown Redevelopment Agency Advisory Committee approved a motion to support the continuance of street festivals. On April 11, the Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee took similar action.

City Council needs to make a policy decision regarding street events. The City Code recognizes that special events provide for an economically viable community and are in the best interest of the public. Long time merchants in Melbourne have indicated that special events help market the Downtown Melbourne area and bring in new customers. The special activity permitting process is superintended with the needs of the applicant, merchants and those attending the event being considered.

Staff continues to inform those merchants experiencing displeasure that, although parking is not available immediately in front of a specific business, public parking is available throughout the area.

Moved by E. Palmer/C. Palmer to adopt a policy to continue to allow barricaded street events.

In response to Mrs. Walker, Mr. Hill indicated that all applications will continue to be evaluated to determine if city services (police, fire, etc.) are required.

The question was called. Motion carried unanimously.

22. ORDINANCE NO. 2002-34: (First Reading) A proposed ordinance to amend the City Code, Chapter 28, Streets, Sidewalks and Other Public Places, as recommended by the Code Review Committee, Section 4.

Attorney Gougelman read the ordinance by title.

The proposed changes to Chapter 28 include:

- Section 28-2 – reference to specific standards.
- Section 28-6.1 – streamline of street name change procedure. The proposed language provides that the City Council or person from the public, real property

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owner, or other governmental agency may be the applicant. If the City Council is the applicant, the “consent to change street name” form is not required.

The current Code makes numerous references to a “petition”. As referenced, the petition is actually the application (and not the consent to change street name). The word “petition” has been changed to “application” and an actual application form has been developed. The proposed application and consent form that will be used in conjunction with the new Section are included in the agenda backup material.

- Section 28-7 – all references to Nasa Boulevard have been corrected to NASA Boulevard.
- Sections 28-21 through 28-26 – numbering system and assignment of numbers updated to reflect the current practice.

One of our Code Review Committee members expressed concern with the practice of changing street numbers (odd/even) when the street curves. Based on his input, Section 28-23 was amended to provide that “odd/even numbers shall not be changed when the street direction curves or changes.”

- Sections 28-81 through 28-87 – updated to reflect current practice. Currently there is no deposit; therefore, all language referencing deposit has been repealed.
- Section 28-105 – repeal of language requiring that a notice of adoption (after an abandon and vacate ordinance has been adopted) be advertised. This is not a State Statute requirement and it places an extra burden on the City Clerk advertisement budget. In accordance with the Statutes, the ordinance to abandon and vacate is always advertised 10 days prior to the public hearing/second reading. This practice will not change.
- Section 28-125 – the format of the notice has been repealed and references to City Clerk have been changed to Building Official.

Mr. Hill confirmed for Mrs. Hand that with the exception of correcting “Nasa” Boulevard to “NASA” Boulevard, no other name changes are included in the ordinance.

Mrs. Poole referenced the renaming of Ultcht Street to Brevard Drive (changed in 1969). She discussed the history of Judge Ultcht.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2002-34. Motion carried unanimously.

23. COUNCIL ACTION RE: Requests by Council Members Poole and E. Palmer to attend the Florida League of Cities Legislative Wrap-Up Policy Committee Meeting in Orlando on June 7, 2002.

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

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24. COUNCIL ACTION RE: Board Appointments

- a. Babcock Street Community Redevelopment Agency Advisory Committee – three regular members

Moved by E. Palmer/Hand to reappoint William Koehne and James Whaley. Motion carried unanimously. (5/4/2002 - 5/3/2004)

Moved by C. Palmer/E. Palmer to appoint John Edmiston as a regular member. (Motion was treated as a nomination.) Mayor Buckley nominated Frank Facciobene, Jr.

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

Mrs. Palmer asked the Mayor to elaborate on his nomination, especially since the alternate member, Mr. Edmiston, is interested in being appointed. Mayor Buckley replied that Mr. Facciobene has a business located at the end of Babcock Street and he has been attending the meetings.

The roll call vote was:

Edmiston: E. Palmer, Poole, and C. Palmer

Facciobene: Contreras, Walker, Hand, and Buckley

Appointed: Frank Facciobene (5/14/2002-5/3/2004)

25. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Poole referenced the assurance made by Tony Masone to Council that he would not apply for a variance (March 12 Council Meeting – Tropic Car Wash). She reported that he applied for and received approval on several variances.

Attorney Gougelman briefed Council on the May 8 oral arguments made before the Circuit Court regarding two legal cases: Welsh, Robertson, Lewis and Rummel vs. City of Melbourne and The Florida Institute of Technology vs. City of Melbourne.

He noted that the written opinions will be issued and that his comments are based on the demeanor of the judges.

In the Welsh case, case law out of Dade County was used in the argument by the city (whether the zoning would be more compatible with the zoning to the south or to the north). The court seemed to be favorably impressed by that and more likely than not, the city will be successful.

In the FIT case, the city is not going to prevail. The court spent five minutes discussing the Council procedure and five minutes discussing evidence. With regard to evidence, they

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discussed whether or not stormwater planning and engineering are proper elements to consider in a site plan evaluation. Mr. Gougelman added that the court was openly hostile to the city's position.

Attorney Gougelman agreed with Mrs. Poole that the judges probably had their minds made up prior to hearing the oral argument. Prior to the oral argument, they would have reviewed the briefs and verbatim transcripts.

Mrs. Walker asked when the city can expect an opinion. Mr. Gougelman replied generally two – three months. Any appeal would depend on the basis of the opinion rendered.

Mr. Contreras asked the attorney to elaborate on the Council procedure, the high degree of hostility demonstrated by the court, and the cost to the city.

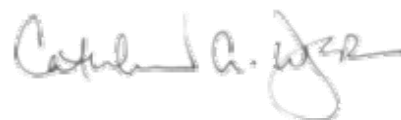
Attorney Gougelman said a concern was raised that Mrs. Hand was not present during the first vote. The court seemed satisfied with the procedure we followed (the review by Mrs. Hand of the transcript from the first meeting, etc.). The other issue was Council Member Poole's involvement in the case. The court seemed to pick up on Crooks' (attorney for FIT) argument that there was bias. The city argued that any action by Council requires four votes and the plan was turned down by a 5-2 vote. Questions were raised about deprivation of due process. The costs for this case are estimated at \$5,000 - \$8,000.

Discussion followed regarding flooding and drainage and the review process followed by the city and whether the city can use the City Engineer as an expert witness for drainage issues. Following a brief discussion, Mr. Hill indicated that he would provide Council with additional information regarding the city staff review process and what other cities require in advance of site plans.

26. ADJOURNMENT

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

The meeting adjourned at 11:36 p.m.



City Clerk – 5/23/2002

Approved by Council: _____