

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 28, 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 Wuanda Medina, Elfaro Lighthouse Church, gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

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| 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 a Beautification Award to Holy Trinity Episcopal Academy; accepted by Cathy Ford, Head Master.

5. APPROVAL OF MINUTES – May 14, 2002 regular meeting

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

6. CITY MANAGER'S REPORT

No additions/no questions.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. COUNCIL ACTION RE: A legislative update presented by Representative Mike Haridopolos, Florida House of Representatives. (Postponed by Council 4/8/2002)

Representative Haridopolos briefed Council and noted that with the new redistricting he represents a larger area of Melbourne. He reported that overall the Legislature did a decent job in Tallahassee. They achieved the main budget priorities although education

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funding is open for debate. He pointed out that even the lowest estimate shows that per student spending increased by 2 – 2.5%.

Vice Mayor Hand asked if there was information available on elder care. She noted that many seniors are able to stay in their home but need assistance in some manner. Representative Haridopolos replied that there is some coverage or additional coverage available through the state. He asked Mrs. Hand to contact him.

Council Member Ed Palmer asked about housing for the mentally ill. He noted that this is a segment of the population that we cannot overlook. Mr. Haridopolos replied that has been a major concern and the state has been trying to meet that need. He indicated that he would share information related to the percentages Brevard receives.

Mr. Palmer referenced county enclaves and stated that a Special Act will be required to ensure that enclaves are eliminated. Representative Haridopolos agreed that is an issue that should be addressed. He recommended the different cities write a joint letter and said that the Brevard Legislative Delegation would work on this issue after November.

Mr. Hill pointed out that the Legislature reduced the contribution rates for the Florida Retirement System by using surplus funds. He asked if that was a one-time reduction or if the support (from the state) would be continual. Mr. Haridopolos said he is not familiar with that; however, he will investigate and return with an answer.

Mrs. Walker referenced the recent case of a five-year old Miami girl who has been missing for a year. She expressed concern about the agency (State of Florida Department of Children and Families) charged with supervising her care. Representative Haridopolos stated that the people working for the state need to be responsible for their actions and held accountable. The role of government is to take care of its most vulnerable citizens and the person assigned responsibility must take their role seriously. When there is a discrepancy, it should be reported. He elaborated on the proactive, positive approach Governor Bush is taking on this issue.

In closing, Mr. Haridopolos displayed a chart, which indicates that state government is growing. He said that concerns him because government should not grow faster than personal income. He added that people spend their money smarter and more efficiently than government and he would like to get back to that idea.

9. COUNCIL ACTION RE: Discussion of Airport matters – Charter and Code provisions.
(Postponed by Council 4/23/2002)

From the agenda report: This item was scheduled for discussion at this meeting; however, the Airport boundaries issue has not yet been completed. Airport Attorney Bill Potter has presented City Attorney Paul Gougelman with documents relative to this issue and additional time is required for review.

In the meantime, questions have been raised about the amount the city has paid to the Airport Authority for various uses of property. A quick review of the records indicates the

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following:

Police Headquarters Lease – The first payment was made in 1985 and the last payment was made in 2000. The total paid over the lease period was \$2,570,577. At the end of the agreement period, the property was to be deeded over by quit claim deed.

1997 David B. Lee WWTP Ground Lease – This is a 40-year lease for 12 acres, which began October 1, 1998. Total payments to date are estimated to be \$108,350. The annual lease payment is \$29,550.

Percolation Pond – Dating back into the 1970's, there were several agreements for use of land for percolation ponds at fair market value of apparently about \$100,000 per year. In 1990, this was revised to require payment of \$134,138 (28.54 acres at \$4,700 per acre). The 1991 lease required payment of \$160,430 (28.54 acres at \$5621.23 per acre). The 1992 lease required payment of \$160,430 per year. The 1993 lease required payment of \$160,430 per year. Thereafter, the city stopped using the ponds and restored the property.

Booster Station – Hibiscus – A lease amount of \$235 per month (\$2,820 annually) is paid for the use of property where the Hibiscus tank and booster station sits (Hibiscus at Woody Burke Drive).

At the request of Mrs. Poole, Mayor Buckley read the information outlined above. Mrs. Poole stated that she does not mind postponing the boundary issue; however, she believes that other discussion needs to continue.

Mr. Palmer asked when the boundary issue will be discussed. Mr. Gougelman said either at the next meeting or the meeting after that.

Philip Azeredo, 1957 Pineapple Avenue, proposed that the Airport Authority be abolished. He discussed the following concerns about the Airport: proposal to add a parking garage when the current lot is only 35 – 40% filled (noted that he counted cars last weekend); the Airport hiring a consultant, Rick Hutcherson, who is not from this community, to promote a convention center; the increase in stock by mobile home manufacturers, including the manufacturer of Air Streams that are located in Port O' Call; and the decrease in Delta Airlines stock.

Mayor Buckley pointed out that Mr. Azeredo counted cars in the Airport parking lot over Memorial Day weekend – one of the busiest highway travel weekends.

Eric Ellebracht, 1448 Tyler Avenue, stated that the decision to abolish the Airport Authority should be made by the voters. He discussed his concerns, including the Airport being the only city agency with an armed police force; the Airport Authority having authority over property that is located miles away from the Airport; the duplication of police and fire services at the Airport; and the history of Port O' Call and the charitable good works by its residents. Mr. Ellebracht concluded by saying the three Council Members who serve on the Airport Authority should recuse themselves from voting.

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Mayor Buckley clarified that the fire station located at the Airport can respond outside the Airport boundaries.

Mrs. Poole stated that there are only three members of Council who know what is going on at the Airport. She asked Attorney Gougelman to read a memorandum dated May 15 from James C. Johnson, Executive Director, to “staff.” The memo states that effective immediately, all correspondence, e-mail, telephone conversations, personal meetings, etc. with the Airport Authority board, City Council and City Manager will be handled by the Executive Director only.

Mrs. Poole stated that she does not feel that she can ask employees, like the (Airport) Finance Officer, questions. She discussed the various Charters in the history of the city and noted that each provided that the terms of the Airport Authority members would be for two years. Since members have been reappointed and have served more than two years, she feels that the Charter has been violated. Additionally, she pointed out that an amendment to the Charter on the composition and terms of the Airport Authority would require a referendum.

Mrs. Poole referenced Airport Authority minutes where Mr. Johnson has indicated that he does not agree with term limits. She repeated that all the past Charters and the current Charter provide for a two-year limit on the Airport Authority.

Continuing, Mrs. Poole discussed the following actions taken by the Airport Authority, which concern her: 8/15/2001 – recommendation to approve waiver of rental fee for Aircraft Service International (ASI) for up to one year; 11/16/2001 – recommendation to extend the option to lease for an additional 12 month period for Global Technology Center due to downturn in economy; not extending the Port O’ Call lease (because of the Global Technology option) and throwing the residents of 33 years into turmoil; and the Airport Authority supporting seven Chambers of Commerce and an “expanded marketing initiative.”

Mrs. Poole added that the Port O’ Call residents have paid \$69,952 to the county for taxes, which does not include the lease payments to the Airport. She stressed that the information she has shows the Port O’ Call residents contribute to the economy. She concluded by stating that the citizens should be allowed to speak through a referendum. A new Authority can be formed with Council Members or members that report to Council.

Mrs. Hand stated that all Council Members are able to attend Airport Authority meetings and speak on any issue.

Mr. Palmer said it is important for everyone to know that the Melbourne International Airport pumps in over a billion dollars per year to the economy. The Authority is trying to do its best to bring more airlines to Melbourne and it is running an industrial park, which provides 6,000 jobs on the Airport.

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Jim Johnson, Executive Director, Melbourne International Airport, informed Council that it is difficult to market airlines to serve a small regional airport. However, Melbourne has one of the strongest industrial parks in the nation. That park supports the Airport in pumping \$1.1 billion each year to the local area economy and providing more than 6,000 jobs. The Airport creates a profit even without sufficient air service. It has a strong management team and a strong, dedicated Airport Authority board. He stressed that the Airport is not guilty of any wrongdoing.

Mr. Johnson commented on the following:

Term Limits – He does not agree with term limits at the Airport. Rather, he agrees with having highly educated members. Education takes time and a member can't be educated on Airport matters in a two-year timeframe. It is a highly technical industry.

Parking Lot – At the last meeting, the board made a decision to take \$4 million from the state for a parking lot. Construction is not scheduled until 2004-05 or 2005-06.

Memo to Staff – He noted that it is his responsibility to communicate with the Airport Authority board and City Council. He added that the memo does not mean a Council Member can't contact a staff person.

ASI Lease – The lease was waived for one year in an effort to keep the service.

Chambers of Commerce – The Airport supports seven chambers of commerce through dues and marketing.

Mrs. Poole said she realizes that Mr. Johnson does a tremendous job and that the Airport is highly industrial and technical; however, she said the Airport needs more airlines. She said she was surprised that we were using the Chamber of Commerce for marketing when we have a Marketing Director at the Airport. Mr. Johnson clarified that we have one Marketing Director – not a team.

Discussion continued regarding Airport employee travel information that Mrs. Poole is waiting for. She stressed that she wants to know where the tickets were purchased for the Airport trips that were taken. Mr. Johnson elaborated on the audit process that the Airport travel documents go through.

Mrs. Poole asked why Global Technology has not brought its plans to the city and why the convention center was not brought to City Council. Additionally, she questioned what the Airport is doing about noise.

Mr. Johnson said that he is speaking with the Fountainhead Homeowners' Association about noise tomorrow. Mrs. Poole said she has videos that show planes following a flight path down Garner Avenue. Mr. Johnson clarified that the FAA is responsible for traffic in the air. Mayor Buckley agreed that the FAA runs the local tower.

A brief discussion continued.

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Mayor Buckley said that the City of Melbourne is in control of the Airport. He pointed out that there are three Council Members who serve on the Airport Authority. The Chamber of Commerce and the Airport tenants each appoint one member and those five members select the other four two at-large members. The Authority is operating the Airport in a financially responsible manner and everything has been done to make the operation as successful as possible. He noted that there are other Airports that are not making it financially.

Mr. Johnson confirmed for the Mayor that Melbourne has the opportunity to pick up charter flights because Highway 192 is finally being four-laned.

Mr. Contreras asked if any of the citizens (in the audience who support abolishment of the Airport Authority) have made recommendations for marketing the Airport. Mr. Johnson replied absolutely none.

Mr. Contreras asked what would happen to the quality of the Airport operation if members revolved every two years. Mr. Johnson responded that the Airport is a highly technical industry and he believes the quality would be tremendously lowered. He added that members should serve as long as possible and participate in education and marketing trips.

Mr. Johnson confirmed for Mr. Contreras that a technological center at the Airport would be a big draw and contribute to the high yield ridership that the airline industry is looking for. He agreed that the current Authority “thinks outside the box” and is a team that looks to the future.

Mrs. Poole returned to the discussion regarding term limits. She noted that our state officials have term limits and added that Mr. Johnson has his own group on the Authority that operates the way he wants. Airport agendas are written and passed.

Mr. Johnson disagreed and said the first two years on the Authority for a member are a learning phase. Mrs. Palmer asked Attorney Gougelman to comment on Ordinance No. 67-7 with regard to term limits for Airport Authority members.

Attorney Gougelman stated that his reading of the ordinance is that there is no preclusion to an Airport Authority board member being reappointed. He clarified that three of the Authority members are subject to term limits by the mere fact that they are Council Members and Council is subject to term limits.

Mrs. Palmer said the City Council has the opportunity to appoint three members and the same three don't have to be appointed year after year. She added that she hasn't heard anything to do with the mismanagement of the Airport Authority and if there is going to be a referendum, she would need more evidence. Additionally, she said the only issues she has heard relate to the disagreement about the handling of Port O' Call and Trailer Haven.

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Mr. Johnson agreed with Mrs. Hand that a convention center would bring people in with money to spend on hotels, restaurants, etc. He stressed that we must do something to force the growth.

Mrs. Palmer stated that if Council does not feel it has enough of a voice, just short of abolishing the Authority, the board could be restructured to include more representation from the City Council.

Discussion continued regarding term limits. The Mayor stated that the City Attorney has rendered an opinion regarding term limits on the Airport Authority.

Moved by C. Palmer/Contreras to further postpone discussion of Airport boundaries until the City Attorney completes his review. Motion carried unanimously.

Mrs. Walker stated that she is in favor of members serving more than two years on the Authority. She agreed that it is a learning process.

Recessed: 8:52 p.m.
Reconvened: 9:03 p.m.

10. ORDINANCE NO. 2002-32 (A&V #251): (Public Hearing/Second 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, Crethaven Homes Subdivision Section 1. (Requested by Bridgett Sutphin) (First Reading 5/14/2002)

Attorney Gougelman read Ordinance No. 2002-32 by title. There were no comments from the public.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2002-32. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2002-33 (Z-2002-923): (Public Hearing/Second 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) (First Reading 5/14/2002)

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

Moved by Walker/Hand for approval of Ordinance No. 2002-33. The roll call vote was:

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

Nay: Poole and C. Palmer

Motion carried.

Mrs. Poole stated that she voted nay for the same reasons cited at the last meeting.

12. ORDINANCE NO. 2002-34: (Public Hearing/Second 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. (First Reading 5/14/2002)

The attorney read Ordinance No. 2002-34 by title. There were no comments from the audience.

Moved by Poole/Hand for approval of Ordinance No. 2002-34. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

13. COUNCIL ACTION RE: Consent Agenda

Note: Staff withdrew item “f” from the agenda.

Mrs. Hand declared a conflict of interest on item “h” because she is an employee of Health First.

Moved by Contreras/E. Palmer for approval of items 13 ‘a’ through ‘e’ and ‘g’ through ‘h’ as recommended. Motion carried unanimously with a 6-0 vote. Mrs. Hand abstained from voting.

For the record, Mrs. Hand stated that she supports the items on the consent agenda. Attorney Gougelman recommended that in the future if there is a conflict, Council remove the item from the consent agenda and vote on it separately.

The consent agenda was approved as follows:

- a. Purchase of a 2002 or newer Ford F550 Fire Rescue Vehicle from Ferrara Fire Apparatus, Inc., Holden, LA - \$81,537.
- b. Contract for construction of various sized storm drain pipes of various sized lines at multiple locations, Insituform Technologies, Inc., Jacksonville, FL – \$48,766.92.

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- c. Contract for the purchase and delivery of quicklime for the Wastewater Treatment Division, Global Stone Tenn Luttrell Company, Luttrell, TN - \$46,220.
- d. Blanket purchase order for purchase of 975 tons of ferric sulfate for the Water Production Division, Kemiron Companies, Inc., Bartow, FL - \$115,050.
- e. Purchase of 96 Dow Filmtec 8” high surface area RO Elements, Consolidated Equipment, Inc., Omaha, NE - \$47,232.
- f. Annual contract to provide maintenance, demand services, and non-contract services for various city-owned communications equipment, Communications International, Vero Beach, FL – estimated annual cost \$16,967.

Note: Item “f” was withdrawn from the agenda by staff.

- g. Sixty month lease of a Canon iR5000 copier, Ikon Business Solutions, Inc., Melbourne, FL – estimated cost \$26,850.
- h. Right-of-way use agreement with Holmes Regional Medical Center for lighting on Hickory Street.

14. ORDINANCE NO. 2002-35 (A&V #254): (Public Hearing/First Reading) A proposed ordinance to abandon and vacate the sanitary sewer easement that runs through the proposed Causeway Center Site.

Attorney Gougelman read the ordinance by title.

From the agenda report: The sewer runs more or less through the center of the development site where the new building is to be located. The applicant proposes to relocate the sewer to a route around the site and to tie it back into the sewer system. From an engineering perspective, the grades in the area are such that this can be accomplished. The new route will be within the public right-of-way so new easements will not be needed.

There were no objections from city departments or other utility companies.

The recommendation is for approval of the ordinance vacating the sewer easement with the effective date of the ordinance being subject to the following:

- a. Completion of construction of the relocated sanitary sewer.
- b. Acceptance of the new sewer line by the City Engineer as meeting city construction standards.
- c. The developer posting a two-year maintenance bond for the new sewer line.

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Attorney Gougelman clarified for Mrs. Poole that this action is necessary regardless of whether the trysting steps are moved.

Dave Menzel, representing the applicant, stated that they will return with a plan to move the trysting steps that he knows Council will like.

Mr. Menzel confirmed for Mrs. Palmer that they will have to meet FDOT standards and provide for the replacement/repair of grass and paving.

There were no comments from the public.

Moved by Hand/Contreras for approval of Ordinance No. 2002-35. Motion carried unanimously.

15. ORDINANCE NO. 2002-36 (A&V #255): (Public Hearing/First Reading) A proposed ordinance to abandon and vacate a 7.5-foot public utility easement along the eastern lot line of Lot 150, Rio Villa Phase IV Subdivision (Requested by Peter and Sharon Weiss.)

Attorney Gougelman read the ordinance by title.

From the agenda report: The applicants own the adjoining lot in the subdivision and they wish to have the easement that lies in the middle of their property vacated. There were no objections from city departments or other utility companies.

Philip Nohrr, attorney representing the applicants, was present.

There were no comments from the audience.

Moved by E. Palmer/C. Palmer for approval of Ordinance No. 2002-36. Motion carried unanimously.

16. ORDINANCE NOS. 2002-37, 2002-38, AND 2002-39 (AR-2002-138, CPA-2002-02, AND CPA2002-03/Z-924 AND Z-925): (Public Hearings/First Readings) Proposed ordinances for the annexation, establishment of land uses and establishment of zoning on property located west of John Rodes Boulevard north of Eau Gallie Boulevard and east I-95. (Owner/Applicant/Representative – Beville Outlaw) (P&Z 5/2/2002)

- a. Ordinance No. 2002-37: A proposed ordinance for the annexation of a 7.42-acre parcel and 1.9 acres of an adjacent right-of-way easement for a total of 9.32-acres.
- b. Ordinance No. 2002-38: A proposed ordinance establishing Low Density Residential land use on the 9.32-acre parcel and changing the land use on an adjacent portion of the parcel (1.14 acres) already in the city from Medium Density Residential to Low Density Residential.

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- c. Ordinance No. 2002-39: A proposed ordinance establishing R-1B (Single-Family Residential Zoning) on a 9.32-acre parcel, changing the zoning on a 1.14 acre portion of the parcel from R-2-T (Planned Residential Development for Mobile Home Parks) zoning to R-1B, and changing the zoning on an adjacent 8.92 acre parcel from R-1A (Single-Family residential) to R-1B (Single-Family Residential).

Attorney Gougelman read each ordinance by title.

Mr. McCord briefed Council on the request and noted that this action will create a 19.38-acre parcel zoned R-1B. The property is currently vacant. He discussed the surrounding land use and zoning.

The Planning and Zoning Board recommended approval of the requests with the findings for each outlined in the agenda package.

Mrs. Hand asked if access to the development will be from John Rodes Boulevard. Mr. McCord said they do not have a plat yet; however, John Rodes Boulevard will mostly likely be the access point.

Mr. Palmer asked how the city obtained approval to annex the FDOT right-of-way easement. Mr. McCord said it is an easement, not part of the I-95 right-of-way. We do not want to leave a remnant of real property. There are no issues associated with annexing right-of-way; that action won't change responsibility for maintenance.

Mr. McCord assured Mr. Palmer that the applicant will not be able to build homes in the right-of-way. Following a brief discussion about the land use and zoning, Attorney Gougelman confirmed that he will review the FDOT right-of-way to determine if any changes need to be made to the ordinances prior to second reading. Mr. Palmer asked that FDOT be notified about this action.

Mrs. Poole discussed her concerns with the R-1B zoning and 50' lots. She questioned how this can be considered low density. Mr. McCord said the Comprehensive Plan approved by Council provides for this.

Moved by Poole/Contreras for approval of Ordinance No. 2002-37. Motion carried unanimously.

Moved by Hand/Walker for approval of Ordinance No. 2002-38. Motion carried unanimously.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2002-39. Motion carried.
Mrs. Poole voted nay because of the R-1B zoning.

17. SITE PLAN APPROVAL (SP-2002-07/CASCADES APARTMENTS): (Public Hearing) A request for Site Plan approval on a 105.8-acre parcel zoned R-2 (Cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) located west of Wickham

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Road and north of Post Road. (Owner – Shanash Development Corporation) (Applicant – Cascades Apartments of Melbourne, Ltd.) (Representative - Philip Nohrr)

Mayor Buckley disclosed that he met with Seth Wise, Levitt Commercial, last week. Mr. Wise discussed his plans for the development and explained that he wanted to make this a “first class piece of property” and there will possibly be garages. (Later under this item, Mayor Buckley added that Attorney Phil Nohrr was present during this meeting.)

Mr. McCord reviewed the agenda report and discussed the surrounding land use and zoning. Much of the property contains wetlands including the large wetland slough located east of Windover Farms Subdivision. Wetlands are located at the south end of the property, east of Post Road-Cascades Subdivision, and in the northeastern portion of the property.

In 1990, Council annexed, established land use and zoning on this property and entered into a Tri-Party Agreement with Brevard County and the owner concerning the development of the 155.1187-acre property. The agreement permitted the development of 905 units on the 155.1187-acre parcel. In 1998, an additional 12.8± acres to the north were annexed. Several parcels were deleted from the total: the Wickham Road retention ponds, the 129 single-family unit Post Road-Cascades Subdivision and retention/mitigation easement, and the school and access road. This has resulted in reducing the available number of units that could be constructed on the remaining property.

The original 155.1187 acres permits 905 units. Removing the 21.39 acres of non-residential land results in 133.72 acres or 802 units at six units per acre. One hundred and twenty nine units have been constructed in the Cascades single-family subdivision leaving 673 units available. This does not include the 12.8 acres annexed, which at six units per acre, would allow an additional 76 units. Therefore, the total units that could be constructed on the remaining undeveloped portions of the property is 749 units.

The applicant proposes to construct a 10-building, 280-unit apartment complex on the central portion of the property. Accessory garages will be provided for the apartments as well as surface parking. Eighty-eight of the total 575 parking spaces will be provided in garages. The complex will also contain a clubhouse with a pool, two tennis courts, and a dock on the lake. Maximum building heights will be 38 feet. The applicant is proposing a central trash dumpster and compactor with private on-site garbage collection. Code (Appendix D, Chapter 9, Article II) requires that dumpsters be distributed throughout the complex. A variance would be required for a central collection point.

The buildings on the south side of the complex will be at least 75 feet from the rear lot lines of the Post Road-Cascades Subdivision. A substantial vegetative buffer should be planted in the south 25 feet of this area.

Retention will be provided by two retention basins and by using the existing northeast wetland, which will be modified and preserved. An agreement with the School Board allows for an interconnection of the two drainage systems allowing the School Board access to an outfall into the slough. The proposed north retention pond would be

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constructed as part of Phase One and would also be used for Phase Two retention. A temporary drainage ditch connection is now provided from the existing retention pond to the easterly wetland. This connection may have to be relocated and will be connected to the north pond with eventual outfall to the westerly wetland slough.

The upland portion of the property contains longleaf pine flatwoods with extensive palmetto under-story. The developed portions of the property include a road constructed by the School Board to serve Longleaf Elementary and a retention pond/mitigation area constructed as part of the Post Road-Cascades Subdivision. The Post Road-Cascades Subdivision has a retention and drainage easement on the southerly portion of the property.

The wetlands will be modified slightly to accommodate the design of the site. Some wetlands will be taken while other wetlands will be created where none now exist. This will result in a net increase of .97 acres (2.39 acres of mitigation area to 1.42 acres of wetland impact) of wetland area. The Environmental Impact Assessment Report indicates that no endangered or threatened species occupy the property. The county scrub jay maps indicate that a portion of the property is considered prime scrub jay habitat; however, no scrub jay habitat exists on the property or was identified in the EIA. A permit will be required from the U. S. Fish and Wildlife Service.

Access for this portion of the project will be from the roadway constructed by the School Board, which connects to Wickham Road. This roadway will eventually be deeded to the city and is constructed on the applicant's property. The School Board has an access easement. The traffic study report provided by the applicant in 1998 with the last application indicates that a signal would be required at the access roadway/Wickham Road intersection. The signal was installed shortly after the school was constructed. The apartment complex and school traffic will use the roadway and this will be the only access to/from Wickham Road at this time. An estimated 1,856 daily trips (174 p.m. peak hour trips) will be generated by the apartment complex, and an estimated 981 daily trips (261 a.m. peak hour trips) are now generated by the school. All of these trips impact or will impact Wickham Road and the signalized intersection at Longleaf/Kensington Drive.

According to the report, this development will not adversely affect the adopted operating level of service when the project is completed. The school also impacts Wickham Road. Based on the study findings and staff review of the study, off-site improvements may be needed on Wickham Road. Specifically, this project will require that a southbound right-turn lane be provided at the main roadway that also services the school and the southbound left turn lane at Post Road will need to be extended to accommodate existing and future queuing traffic approaching this intersection. The southbound right turn at the roadway was constructed when the signal was installed. Other minor intersection improvements may be required at Longleaf/Kensington Drive to facilitate traffic movements. Impact fees derived from the project will, as agreed, be used to reimburse the county on a pro-rata share based for the cost of the signal.

The applicant proposes to develop a Phase Two project in the future. A second permanent driveway connecting the project to Wickham Road to the north of the existing

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driveway should be required. This should be provided when any portion of the property designated as part of the second phase is developed. The plan indicates a roadway/driveway from the north side of Phase One to Wickham Road. Initially, this will be used for construction access. As a result of having only one access way to/from the complex in Phase One, all trips other than construction trips will be required to traverse past the Lingleaf School. Due to the close proximity of the school to the proposed complex, construction vehicle access should only be permitted from the north by a temporary driveway north of the Baptist Church. This temporary driveway should be retained for the required Phase Two access driveway and utility line extensions. Having all construction access pass by the school is not desirable, as it could damage the new access roadway and become a hazard to school children and school employees. The 1998 plan approved by Council (SP-1998-03) required the separate construction access.

As part of this site plan the applicant needs to ensure that sufficient access is provided to pedestrian/bicycle to/from the school including access from the single-family subdivision and from other areas surrounding the school. The School Board entered into an agreement with the Windover Farms Homeowners Association to develop a walkway from Windover Farms to the school. The School Board and the property owner have a similar agreement. This agreement should be enforced with all subsequent owners/developers. This pedway would be constructed on the north and eastern portions of the Phase Two site. A separate pedway is needed at the south end of the site to provide a walkway connection to Post Road-Cascades Subdivision. This entails constructing a walkway on a portion of the subject property and on a parcel retained by Lennar Homes as part of a wetland mitigation tract. An access easement should be required along the east banks of the existing retention pond (lake) and the south and east sides of the east mitigation area. Details on construction of the walkway and required permits will need to be resolved at a future date. The city has received notification that transportation enhancement funding from FDOT will be provided to build the pedway between the school and the subdivision.

The Planning and Zoning Board recommended approval of SP-2002-07, Site Plan for Cascades Apartments, Phase One, consisting of a four-page plan prepared by B.S.E. Consultants, Inc., of Melbourne, Florida, identified as Project No. 10303.05, dated April 23, 2002, with the findings in the agenda package and the following conditions:

- a. Any change to the site plan will require reevaluation by the Planning and Economic Development Department. Any substantial change to the site plan will require its review and approval by the Planning and Zoning Board and City Council.

A substantial change in the site plan includes, but is not limited to: 1) a decrease of 5% or more of the open space or vegetative areas (which are not part of a stormwater retention area) on the property, including landscaped islands in the parking spaces; 2) a 10% or more increase in the gross square footage in the floor area of structures; 3) a decrease in the number of parking spaces provided below the Code required parking spaces; 4) any additional impact to wetlands not shown on the site plan; or 5) an increase in the number of units.

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- b. Prior to development of the property, the owner and/or applicant shall obtain a clearance letter or approval of a mitigation plan from the U. S. Fish and Wildlife Agency to develop any portion of the property identified on the official scrub jay habitat maps, or for any other endangered or protected species or species of special concern. Should the developer discover that endangered or threatened species for which a permit has not been granted are found on site after plan approval and prior to the completion of construction, construction shall be suspended until adequate permits are acquired or the appropriate jurisdictional agency provides approval to proceed with development. “Development” shall be defined as set forth in Section 380.04, of the Florida Statutes.
- c. Provide a substantial vegetative buffer with fast growing trees and other vegetation within the 25-foot wide buffer in the southwest area of the plan adjacent to single-family lots.
- d. The applicant shall create a public access easement for bicycle and pedestrian use, extending from the east right-of-way line of Huntleigh Drive, thence extending along the east side of the site adjacent to the east shore of the existing lake and mitigation area to the south line of the four lane access road. Said easement shall be no less than 12 feet in width and shall be in a form acceptable to the City Manager and City Attorney. This shall require the owner/developer to negotiate with affected parties including, Lennar Homes, the Post Road-Cascades Homeowners’ Association, the St. Johns River Water Management District and other parties or successors with ownership interest in the proposed easement property.
- e. The applicant shall provide a minimum of a 12-foot wide public pedestrian and bicycle access easement along the north boundary of the site and along the east boundary of the site, north of the school retention site or other area approved by the city, per the Development Agreement as recorded in ORB 3673, Page 2960, Public Records of Brevard County, Florida. Said pedway shall be constructed by the applicant as described in the said Development Agreement prior to any Certificate of Occupancy being issued by the city on the subject (site plan) property. Should a situation arise where the school board no longer is able to provide access to the Windover Farms development for pedestrian use, the applicants shall not be required to construct said pedway, but shall retain the 12-foot wide easement for such use in the event that this pedway, or a similar pedway, is constructed at a future date serving Windover Farms and other residential areas north and west of the apartment complex site. (This condition shall have no affect on any private agreements between the applicant and the school board.)
- f. The applicant shall provide to the city an acceptable cross drainage easement or recorded agreement with the school board providing for storage and conveyance of stormwater for the school site development and the apartment complex site development.

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- g. The applicant and/or applicant's agent, including Lennar Homes, shall modify the temporary drainage access easement (ORB 3615, Page 2543-2566), which provides stormwater conveyance for the retention pond easement for Post Road-Cascades Subdivision.
- h. All construction access shall be provided from an alternate access driveway other than the roadway, which provides primary access to/from the school to Wickham Road. This will require the applicant to construct a construction site access road to/from Wickham Road through the property located north of the adjacent South Brevard Baptist Church as shown on the site plan. The owner/applicant shall be solely responsible for negotiating and acquiring said temporary and/or permanent construction access roadway. Said road or one in a similar location shall be opened for general apartment or development traffic upon development of any portion of the Phase Two property.
- i. The required transportation impact fees may be used to satisfy or partially satisfy the cost to the county and other parties of financing the improvements and signal made to the joint/school apartment complex driveway (Wickham Road and Kensington Drive). This shall be based on a pro-rata share of total traffic accessing the signalized intersection.

Mrs. Poole said she thought that two entrances were required by our Code. Mr. McCord replied that we are recommending dual access in Phase Two. However, in this case it is an apartment complex – not deeded right-of-way that will be maintained by the city.

Mrs. Poole agreed with a comment made by Mr. McCord during his presentation, which is that the school never should have been built at this location.

Mrs. Poole questioned the drainage system and Mr. McCord noted that the applicant received construction plan approval in 1999-2000. St. Johns River Water Management District approved the drainage at that time. However, the plans have expired.

Phil Nohrr, attorney representing the applicant, clarified that the developer of the shopping center is not his client; that is an unrelated party. Mr. Nohrr discussed the history of the property and referenced the agreement with the county. He noted that it was under that agreement that they came into the city and established the density.

Mr. Nohrr stated that they agree with all the stipulations. He reported that it is highly unusual for an applicant to go through the trouble of construction plans and then not build. Area residents were concerned that the HUD financing meant that this would be subsidized housing. By the time the plans were approved, interest rates moved and the HUD financing evaporated. HUD financing is off the table and they are going in a different direction.

Mr. Nohrr stressed that there are no new issues, other than the fact that it has been proven that the school should not be located at this site. The development is the basic

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development approved in 1998 and they are not doing anything different with the wetlands. The wetlands will be increased by almost an acre.

Moved by Walker/Hand for approval of SP-2002-07 for Cascades Apartments with the proposed conditions.

Mrs. Poole expressed concern about destroying/modifying wetlands. She referenced the stipulation for “substantial vegetative buffer” and asked what this means. She asked if Council can require that the development access road be constructed if Phase Two doesn’t develop.

Attorney Gougelman said it can be stipulated; however, it would probably not be upheld in a court of law. He added that he believes there is too much money tied up in this to not develop.

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

18. COUNCIL ACTION RE: A request for a variance from the Subdivision Regulations, Section 29-6(7) to construct a sidewalk within the right-of-way adjacent to the property, located on Lots 114-120 of Indian River Bluff No. 2 Subdivision on the west side of Grove Lane, the north side of Cherry Street and the east side of Lagoon Avenue.

Mr. McCord reviewed the agenda report. The Indian River Bluff No. 2 Subdivision was platted in 1925. At the time there apparently was no Code requirement to construct a sidewalk within the right-of-way adjacent to developing lots. These lots of the subdivision have remained vacant and now a developer is proposing to construct a commercial building on the site.

The request is for the applicant to not have to construct a sidewalk along the lot frontage on the west side of Grove Lane. The Subdivision Regulations require that a sidewalk be constructed adjacent to all lots.

When the owners of the property were preparing construction plans for an office project they discovered that because of the way the street was constructed in proximity to their property that it would be difficult to construct a code complying sidewalk without realigning the street and changing established drainage patterns. When Grove Lane was constructed it was not constructed within the center of the right-of-way. The applicant has offered to construct a sidewalk along the east side of Grove Lane where there is sufficient useable right-of-way to construct a sidewalk.

The applicant has contacted area residents and has informed them of their plans to construct the sidewalk on the east side of the street as an alternative to constructing the sidewalk on the west side. We have not received any objection to the proposal from area residents. The sidewalk would be constructed in the right-of-way.

The construction plans indicate that a sidewalk will be constructed on the south side of Lagoon Avenue and the north side of Cherry Street adjacent to the property. Crosswalks

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will permit a continuous pedestrian pathway around the project site. This will help to provide a connection to the Babcock Street Redevelopment Area and be the first leg of a planned sidewalk along Cherry Street from Babcock Street to U. S. 1. Initially, the U. S. 1 to Babcock Street sidewalk along Cherry Street likely will only be constructed on one side of the street.

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

- a. Provide a sidewalk on the east side of Grove Lane across from the applicant's development site as indicated on the construction plans for Avionics Industries, consisting of a one-sheet plan signed and sealed by Jake T. Wise on April 11, 2002, and as amended as necessary.
- b. Provide an easement to the city for the roadway (Grove Lane) encroachment and for any encroachment resulting from construction of the sidewalk.

Jake Wise, Construction Engineering Group, civil engineer for the project, stated that he believes the sidewalks will be a good addition to the area and will make a safer condition for the area children. He noted that they do not believe they will impact any trees with the sidewalks. If the sidewalks were constructed on their side, a couple of old oak trees would have to be removed. He concluded by agreeing with the stipulations.

Mrs. Palmer asked for additional information about Avionics Industries. Mr. Wise said they are a small parts distribution company for airplane parts. He confirmed that they are not a manufacturer of parts.

Moved by Hand/Walker for approval of the variance for Avionics Industries to place the sidewalk on the east side of Grove Lane subject to the proposed conditions. Motion carried unanimously.

Recessed: 10:27 p.m.
Reconvened: 10:33 p.m.

19. COUNCIL ACTION RE: Requests by non-profit organization for financial assistance from the city.

From the agenda report: On December 11, 2001 Council approved a revised policy to provide for consistency and allow all grant requests from non-profit organizations to be considered in accordance with approved policy.

Several non-profit organizations were identified in Resolution No. 1727 and will be considered as a part of the regular budget for fiscal year 2002-2003. Requests totaling \$53,823 have been received from these organizations:

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| Organizations approved for separate funding: | 2001-2002 Approved | 2002-2003 Requested |
|---|-----------------------|------------------------|
| Honor America | \$ 11,072 | \$ 12,000 |
| Melbourne Community Orchestra | 5,200 | 6,200 |
| Community Services Council | 9,815 | 9,815 |
| Melbourne Municipal Band | 12,240 | 12,240 |
| Brevard Symphony Orchestra (4 th July In-kind) | 0 | 0 |
| AARP (In-kind Auditorium Rental Fees) | 3,568 | 3,568 |
| Henegar Center | <u>10,000</u> | <u>10,000</u> |
| Total Separate Grants | 51,895 | \$ 53,823 |

Resolution No. 1727 recommends an annual cap of \$60,000 for funding other non-profit grant requests. Nine requests were submitted totaling \$101,345 as follows:

Other nonprofit organization requests:

| | | |
|--|--------------|------------|
| Alpha Phi Omega | \$ 0 | \$ 2,275 |
| American Cancer Society | 0 | 10,000 |
| Big Brothers, Big Sisters | 10,000 | 10,000 |
| Boys and Girls Club | 0 | 15,000 |
| Museum of Arts & Sciences | 10,000 | 0 |
| Crisis Services | 6,600 | 6,070 |
| Florida Wildlife Hospital & Sanctuary | 3,000 | 3,000 |
| Police Athletic League | 0 | 40,000 |
| Melbourne Art Festival | 0 | 10,000 |
| Olde Eau Gallie Merchants' Association | 0 | 5,000 |
| Neighborhood Development Coalition | <u>7,500</u> | <u>0</u> |
| Total Other Requests | \$37,100 | \$ 101,345 |

The following addressed Council and spoke in support of their request:

William Barnett, Boys and Girls Club of Brevard; Jeanne Leeberg, Executive Director, American Cancer Society; Tina Suiter, Melbourne Art Festival; Mary Grace Murphy, Executive Director, Big Brothers and Big Sisters; Libby Donoghue, Crisis Services; Sue Small, Florida Wildlife Hospital and Sanctuary; Josh Pritchard, Alpha Phi Omega; Ron Bell, Police Athletic League; and George Alexander, Olde Eau Gallie Merchants' Association.

By consensus, Council agreed to provide the following funding:

| | |
|---------------------------------------|----------|
| Alpha Phi Omega | \$ 2,275 |
| American Cancer Society | 6,000 |
| Big Brothers, Big Sisters | 6,000 |
| Boys and Girls Club | 6,000 |
| Crisis Services | 5,000 |
| Florida Wildlife Hospital & Sanctuary | 3,000 |
| Police Athletic League | 12,500 |
| Melbourne Art Festival | 5,000 |

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| | |
|--|--------------|
| Olde Eau Gallie Merchants' Association | <u>5,000</u> |
| Total | \$ 50,775 |

Consensus was unanimous on all organizations except the Police Athletic League. Prior to reaching \$12,500, Council had agreed to provide \$10,000. Mrs. Poole and Mrs. Palmer said they could not support providing \$12,500.

Moved by E. Palmer/Hand to award \$50,775 in accordance with the above. Motion carried unanimously.

20. ORDINANCE NO. 2002-40: A proposed ordinance to amend City Code, Chapter 23, Retirement and Pensions, as it relates to the General Employees' and Special Risk Class Employees' Pension Plan.

Attorney Gougelman read Ordinance No. 2002-40 by title.

From the agenda report: This is a proposed ordinance prepared by the attorney for the General Employees' and Special Risk Class Employees' Pension Board. The ordinance updates the Plan to make it similar to the Florida Retirement System with regard to defined benefit plans, to conform to federal law, and to clarify certain provisions and make enhancements to help in recruitment and retention.

Also included in the agenda package is the May 2, 2002 actuarial impact statement prepared by Foster & Foster, the board actuary. The changes in the Code will cause an increase in the employer contribution rate from 12.0% to 12.8% for general employees and from 18.5% to 19.6% for airport security officers.

Moved by E. Palmer/Poole for approval of Ordinance No. 2002-40. Motion carried unanimously.

21. RESOLUTION NO. 1762: A proposed resolution identifying additional water and sewer projects funded with series 2000 water and sewer bond proceeds.

Attorney Gougelman read Resolution No. 1762 by title.

Mr. Hill briefed Council and stated that this action will not increase the budget, bond size or individual project budgets. It simply assigns certain projects to the 2000 bonds.

Moved by Hand/E. Palmer for approval of Resolution No. 1762. Motion carried unanimously.

22. RESOLUTION NO. 1763: A proposed resolution to implement FY 2001-2002 Second Quarter Budget Review recommendations.

Attorney Gougelman read Resolution No. 1763 by title.

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This is the proposed resolution to implement the recommendations of the second quarter budget review for fiscal year 2001-2002. The program improvements are outlined in the agenda package. Adjustments to the Airport Fund adopted at the May 15, 2002 meeting of the Airport Authority Board are included in the proposed resolution.

Moved by Contreras/Walker for approval of Resolution No. 1763.

Mr. Hill responded to general questions from Mr. Palmer.

The question was called. Motion carried unanimously.

23. COUNCIL ACTION RE: Claude Edge Front Street Park Shuffleboard Courts

This is a request for Council authorization to demolish the Claude Edge Front Street Park ShuffleBoard Courts.

From the agenda report: In 2000 the Melbourne Shuffle Board Club decided to relocate its play. The club is now playing as a part of the South Brevard Senior Center. They have indicated they have no interest in returning to Front Street. We would like to proceed with the improvements to the Front Street Civic Center.

The approximate cost of the demolition of the courts is \$3,900. Funding can be provided to the project from funds originally set up for fencing the courts. The Parks Division would then install irrigation and sod the area. The Downtown Redevelopment Committee will consider proposals and make recommendations to Council for future use of the space. The covered walkways and benches will remain, pending future planning for the facility.

Moved by E. Palmer/Poole for authorization for demolition of the Front Street ShuffleBoard Courts. Motion carried unanimously.

24. COUNCIL ACTION RE: Proposed settlement agreement between the City of Melbourne and William J. and Marjorie D. Salmela.

Mr. Hill briefed Council. This is a settlement agreement between the city and William and Marjorie Salmela. The Salmelas filed an action against the city claiming that the city's lift station trespasses on their property and that road improvements were causing their property to flood.

The proposed settlement agreement provides the following:

- The city's lift station was determined by the circuit court in the mid-1990's to be partially within an easement given to the city and partially outside the easement located on the Salmela property. The Salmela's have agreed to convey an easement for the encroaching part of the lift station containing approximately 900 square feet to the city.
- The Salmela's have also agreed to convey an easement for ingress and egress to the lift station containing approximately 2,669 square feet to the city. The easement will also

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allow city employees a larger area for maintenance of the lift station.

- In exchange for the easements, the city will pay the Salmelas \$30,000.
- The city will, at its sole expense, install a French drain system in the northern portion of Placid Drive near the Salmela property, which should reduce the accumulation of stormwater on Placid Drive, which is a public right-of-way. The city had earlier offered to install this drain system prior to the litigation being commenced.
- The Salmelas will dismiss their lawsuit with prejudice, which means that they can not refile the same precise claim. The city and the Salmelas will each pay their own respective attorneys' fees and court costs.
- Both the city and the Salmelas shall file a release of claims against one another, and the court shall retain jurisdiction to enforce the settlement agreement.

There has been considerable litigation involving the parties. Given the value of the easement being conveyed to the city, the proposed settlement agreement would be in the city's best interest.

Moved by E. Palmer/Walker for approval of the proposed settlement agreement and funding of \$30,000 from Water and Sewer Fund to provide the cost of the expanded easement.

Mr. Hill clarified for Mrs. Poole where the French drain will be installed. Attorney Gougelman said that the Utilities Department offered this solution a long time ago and Mr. Salmela never exercised the city's offer until the end of the negotiations.

Mayor Buckley asked how the cost increased from \$10,000 to \$30,000. Mr. Hill explained that the size of the easement the city will receive expanded significantly.

The question was called. Motion carried unanimously.

25. COUNCIL ACTION RE: A request for approval of projects and priorities for state, federal and local funded transportation projects and county roadway system improvements for FY 2003-2004 to 2007-2008; and authorization for Transportation Enhancement grant submission.
- a. Transmission to Brevard Metropolitan Planning Organization of projects and priorities for state, federal, and local funded transportation projects.
 - b. RESOLUTION NO. 1764: A resolution authorizing the City Manager to apply to the Florida Department of Transportation for the Federal Surface Transportation Program's Enhancement Program.

Moved by E. Palmer/C. Palmer for approval of transmission to Brevard Metropolitan Planning Organization the proposed projects and priorities (state and federal funding

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requests FY 2003-04 to 2007-2008, locally funded projects FY 2003-04 to 2007-2008, and county roadway system improvements) as outlined in the agenda package.

Mrs. Poole said she objects to the city advancing the funds for the design phase of the Apollo Boulevard Extension. Mayor Buckley said he believes this is the only way the project will get done. Mrs. Hand agreed and said that we have waited for years for this.

Mr. Palmer asked if the reimbursement is guaranteed. Mr. Hill replied that the city can front the funds and when the funds become available in the FDOT cycle, we would be reimbursed. One source of funds for the city could be impact fees from the north area of the city.

The question was called. Motion carried unanimously.

Mrs. Poole repeated her objection to advancing funds for the Apollo Boulevard Extension.

Moved by Hand/Contreras for approval of Resolution 1764. Motion carried unanimously.

26. COUNCIL ACTION RE: Requests by Council Members to attend the Florida League of Cities Annual Conference, August 15-17, 2002, in Boca Raton.

Six Council members have requested approval to attend the Florida League of Cities Annual Conference to be conducted in Boca Raton, August 15 through 17, 2002.

Maximum estimated cost per person is \$1,019. Funds are available in the Mayor and Council Training and Education budget. Council will need to appoint a voting delegate from the members attending to represent the City.

Moved by Walker/E. Palmer to approve Mayor Buckley and Council Members Contreras, E. Palmer, Poole, C. Palmer and Hand to attend the conference. Motion carried unanimously.

Moved by E. Palmer/Hand to appoint Mayor Buckley as the voting delegate. Motion carried unanimously.

27. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Attorney Gougelman referenced the memorandum he distributed to Council regarding the lawsuit filed by Dr. and Mrs. Kartsonis on the vacating of Sheridan Road. He reminded Council that the hospital agreed to indemnify the city against litigation costs. Attorney Phil Nohrr has been advised that the case documents will be forwarded to him for review.

Additionally, he reviewed the memorandum previously distributed on the Sarno Road Recycling and Mulch facility.

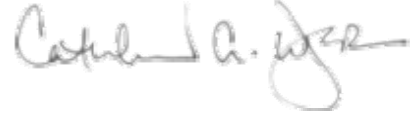
A brief discussion followed regarding the Code Enforcement Board action scheduled for the recycling facility.

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28. ADJOURNMENT

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

The meeting adjourned at 12:16 a.m.



City Clerk – 6/4/2002

Attachment to original minutes: Memorandum of Voting Conflict Form for Vice Mayor Hand,
reference Item #13