

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

A regular meeting of the City Council was held in the City Council Chamber, 900 East Strawbridge Avenue, and was called to order at 7:30 p.m. by Mayor John A. Buckley.

1. Pastor Larry Bazer, First Baptist Church of Melbourne, gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Loretta Isenberg-Hand	Vice Mayor, District 6
	Richard Contreras	Council Member, District 1
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Henry J. Hill	City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Bud Emerson	Assistant City Manager
	Peggy Braz	Planning and Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented a proclamation to Nieves Torres, City of Melbourne Parks Division employee, recognizing the 35th Anniversary of his employment with the City of Melbourne.

Additionally, Mayor Buckley presented a Beautification Award to the Savannahs Apartments; accepted by Marnie Mordak, Leasing Consultant, and Kim Fairchild Support Manager, Savannahs Apartments.

5. APPROVAL OF MINUTES – June 11, 2002 regular meeting

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

6. CITY MANAGER'S REPORT

Mr. Hill reminded Council that a special meeting will be conducted July 2 at 7:30 p.m. The package was distributed at this meeting. Additionally, he noted that City Hall will be closed July 4 in observance of Independence Day.

Mr. Hill referenced the memorandum distributed to Council requesting that an item be added to the agenda regarding special legal counsel in the matter of Florida Recyclers, Inc.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Moved by Poole/C. Palmer to add item 27.1 to the agenda. Motion carried unanimously.

7. PUBLIC COMMENTS

Fred Coladonato, 2107 S. Franklin Street, complimented the city for the Franklin Street road-paving project. He reported that the water in the swales, constructed during the paving, is percolating down and will eventually cause damage to his house.

Mr. Hill indicated that the City Engineer, Howard Ralls, will investigate.

UNFINISHED BUSINESS

8. SITE PLAN APPROVAL (SP-2002-11/WINDWARD POINT CONDOMINIUMS): (Public Hearing) A request for site plan approval for a condominium building on a one-acre portion of the redeveloped Melbourne Harbor Complex, located on the far south extension of Front Street at the end of the peninsula. (Owner – Windward Passage Condominium Association) (Applicant – David T. Menzel, MAI Architects Engineers) (Postponed by Council 6/11/2002)

Mrs. Braz briefed Council. This item was postponed at the last meeting to give staff time to review the permitting information with the St Johns River Water Management District and the Fire Department. The Fire Department has determined that there is adequate area for fire trucks to turn around. The SJRWMD has indicated that it is ready to issue a permit. There have been several concessions required by SJRWMD including an agreement to remove all the riprap (eliminate the note about providing additional riprap, not eliminate the existing riprap), not to trim the mangroves, to provide an upland retaining wall, to provide additional plantings, and to mitigate for the loss of wetlands where the road will be constructed. The developer will provide an easement for the mangroves/shoreline area that will be dedicated to SJRWMD.

The Planning and Zoning Board recommended approval of SP-2002-11, site plan for Windward Point Condominiums, as prepared by MAI Architects Engineers, Inc., of Melbourne, Florida, consisting of a two-sheet plan with Project Number 02-124, dated May 3, 2002, with a revision date of May 8, 2002, with the findings listed in the agenda package and the following conditions:

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

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

- c. The location of the dumpsters and shared retention must be approved by the Windward Passage Condominium Association, Inc. and an easement providing for the use of the adjacent property shall be recorded in the Public Records.
- d. Provide a complete Environmental Impact Assessment Report for the property per City Code, Appendix D, Chapter 9, Article IV. Should threatened or endangered species be found on site or found to utilize the site, applicable permits must be acquired from the appropriate jurisdictions responsible for protecting and regulating such habitat or natural resources.

Mrs. Braz noted that the applicant has provided the Environmental Impact Assessment Report required in stipulation “d.”

Mrs. Poole referenced stipulation “c” and asked the location of the shared retention area. Mrs. Braz noted that the applicant and engineer are present and should be able to answer the question.

Mrs. Poole referenced the January 1983 minutes where the City Council stipulated that traffic arrows would be required around building three for safety reasons. She added that she has previously asked about this stipulation. Mrs. Braz said staff has reviewed the plans from 1982 and 1983 and has not been able to ascertain what “building three” is. Mrs. Poole asked Mrs. Braz to ask our former City Attorney, Jim Reinman, if he is aware of the location of this building.

Dave Menzel, MAI Architects Engineers, clarified that the retention will be totally on site; it will not be shared with the adjacent site. He displayed a conceptual plan showing the layout of the site and referenced the small wetland area that is being mitigated. In exchange, they are going to enhance a three- to four-foot strip around the entire perimeter of the site with mangroves. He stressed that the mangroves won’t be cut; they will create a buffer to hide the wall.

Mrs. Poole asked why the (existing) riprap is not being removed. Mr. Menzel said SJRWMD said they could not because the mangroves are intertwined in the riprap.

Mayor Buckley asked Mr. Menzel if he agreed with the stipulations. Mr. Menzel replied yes.

There were no other comments from the public.

Mrs. Poole referenced the island area and said she obtained a copy of the deed, which shows the (island) was deeded as a conservation area. Responding to Mrs. Poole, Mr. Gougelman said the island area is outside of this site plan area and he is not sure if the deed has been recorded in the county records.

Moved by E. Palmer/Hand for approval of SP-2002-11 subject to the stipulations.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Mrs. Poole referenced the Conservation Element of the Comprehensive Plan, Section E (Goals, Objectives, and Policies), Item 11, which indicates that development activity in the area of Crane Creek may not increase the impervious area by 25%. She noted that the site plan being considered indicates that 49.60% of the area will be impervious.

Continuing, Mrs. Poole said that the island (referenced earlier in the conversation) has been designated as a coastal wetland area. Therefore, she said the peninsula should also be a coastal wetland area. Mrs. Poole stated that we are sacrificing the environment and violating our Comprehensive Plan for monetary reasons.

Mr. Menzel said he is not familiar with the 25% impervious area in the Comprehensive Plan referenced by Mrs. Poole. He commented that in the layout, they have met all the requirements of our ordinances. He added that the island is isolated from this property; it is not a part of this site plan.

In response to Mrs. Poole, Mr. Menzel said the majority of the site has an elevation of 6' although a small edge is at 7'. He noted that they used 7' to be conservative. The first unit will be 13' above that elevation. The parking area of the condominiums on the other side is 3' below grade. This development is planned for 3' above grade with a retaining wall. The retaining wall will act as a buffer against storms and the structure will be storm resistant.

Mr. Menzel agreed to provide Mrs. Poole with a copy of the SJRWMD permit.

Mrs. Poole stated that this is probably the last pristine area along the coast and it should be preserved.

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

9. ORDINANCE NO. 2002-41 (A&V #256): (Public Hearing/Second Reading) A proposed ordinance to abandon and vacate the northern five feet of an existing public utility and drainage easement adjacent to the north property line, less and except the eastern and western five feet thereof, on Lot 25, Eastwood Park Subdivision. (Requested by Charles and Jill Gioffre) (First Reading 6/11/2002)

Attorney Gougelman read Ordinance No. 2002-41 by title. There were no comments from the public.

Moved by C. Palmer/Walker for approval of Ordinance No. 2002-41. The roll call vote was:

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

Nay: None

Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

10. ORDINANCE NO. 2002-42 (CU-2002-13/SP-2002-09/THE REGISTRY OF MELBOURNE APARTMENTS): (Public Hearing/Second Reading) An ordinance granting a conditional use to develop a 142-unit apartment complex on a 10-acre parcel in the C-1 (Neighborhood Commercial) zoning district, located on the west side of Babcock Street south of Eber Road. (Owner – Jerry Pezzeminti) (Applicant – Central Development and Construction, Inc.) (Representative – Deion Lowery) (First Reading 6/11/2002)

Attorney Gougelman read Ordinance No. 2002-42 by title.

Council made the following disclosures: Mr. Contreras spoke with Ron Newkirk on June 19 who expressed concern about the wetland. Mrs. Palmer had the same conversation plus Mr. Newkirk asked that Council postpone action on this item until the wetland area is reviewed. Mrs. Hand had the same conversation with Mr. Newkirk. Also, she spoke with Stella Shockley who is opposed. Mrs. Walker had similar conversations with Mr. Newkirk and Ms. Shockley. Also, she received a message from someone (who did not identify themselves) thanking her for the way she voted at the last meeting. Mr. Palmer spoke with Mr. Newkirk who is concerned about the wetland and asked that the item be postponed. Mrs. Poole spoke to Mr. Newkirk and Connie Vadnal. They are concerned about the wetland, density of the project, and its incompatibility with the surrounding area.

From the agenda report: At the June 11 meeting, the applicant agreed to the following additional conditions, which have been included in the ordinance:

- f. The retention pond will be fenced.
- g. A playground area will be provided.
- h. The dumpster located adjacent to the property at 337 Cinnamon Cove will be relocated.
- i. The front and rear entrances to the apartment complex will be gated.
- j. No parking places will be constructed within 20' of neighboring residences.
- k. The buffer along the area abutting Cinnamon Cove will be masonry or shrubbery at the discretion of the Cinnamon Cove residents.

Phil Nohrr, 1800 W. Hibiscus Boulevard, representing the applicant, listed the concessions made by the developer, which include adding a second access, reducing the buildings along the south property line to two stories, reducing the number of units and increasing the clubhouse area. Additionally, concessions were made at the last meeting (outlined above) in order to promote harmony with the neighborhood.

Mrs. Walker asked the width of the road that will access Eber Road. Mr. Nohrr said it will be 24' wide and will be built according to Code. Mrs. Walker asked if a rendering is available showing what the apartments will look like. Mr. Nohrr said no and added that they are not far enough along to provide a concept.

Mrs. Palmer said she visited a three-story apartment complex located adjacent to a single story development. She noticed that privacy was provided by trees that are at least the

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

height of the homes; they prevent people on the third floor balcony from being able to see into the windows below.

Mrs. Poole asked Mrs. Braz to offer an opinion on whether a traffic signal should be installed at the Registry/Crown Heights entrance or at the Sun Lakes/Lake-in-the-Woods entrance. Mrs. Braz said without conducting the required research, she would say it should be installed at Sun Lakes. She added that Crown Heights and the Registry Apartments will have access to Eber Road, which has a traffic signal.

Ron Newkirk, 232 Cinnamon Lake Circle, said he hopes Council reviewed the pictures submitted by Karen Strauss at the last meeting. He noted that the pictures clearly show that this is a wetland. Additionally, it is on a federal inventory as a jurisdictional wetland. The developer will have to have permits from the city, state and federal government in order to desecrate the wetland. Mr. Newkirk asked what else is needed to show that the wetland must be protected.

Continuing, Mr. Newkirk questioned allowing C-1 zoning to completely encompass a single-family development. He reported that he has discovered that members of Council have taken campaign gifts from the contractor. Additionally, that same contractor is widening Babcock Street (Kimley-Horn). Mr. Newkirk said the people want a fair hearing and would like for the vote to be delayed until the SJRWMD can test the wetland.

Annette Sullivan, 334 Cinnamon Lake Circle, said she is not against development of this property; however, she is opposed to the right of one property owner outweighing the rights of the Cinnamon Cove residents. She said that the residents will lose their privacy in order for this property owner to gain monetary wealth. She asked how this can be considered harmonious when the balconies will face Cinnamon Cove and asked if the buildings can be turned. Additionally, she pointed out the distance between buildings and the adjacent properties and asked if the development can be more centered to make it equitable for all involved.

Mayor Buckley pointed out that the closest three-story building will be located 159' from the Cinnamon Cove property. Additionally, he reported that the applicant will be required to move the dumpster along with the other concessions made. Ms. Sullivan disagreed about the distance and said that a three-story building will be located 110' measured from the cul-de-sac.

Sanda Victory, 238 Cinnamon Lake Circle, read the definition of privacy, invasion of privacy, and right of privacy from Webster's Dictionary. She asked how a six unit per acre development can be located next to a 14.2 unit per acre development without a buffer. Ms. Victory referenced the comments made by Attorney Nohrr at the last meeting (regarding the location of three-story apartments located next to single-family developments) and discussed why those developments can't be compared with this development.

Connie Vadnal, 149 Cinnamon Lake Circle, stated that the issue of urban sprawl is important and becoming more evident throughout the state. She referenced and

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

submitted a newspaper article relating to a “glut of apartments” in Sanford. She said she hopes the city does not make the same mistake as others and wind up like South Florida.

Continuing, Ms. Vadnal said everyone keeps referring to the two-story buildings. She corrected that reference and said there is only one two-story building on the site plan. Additionally, she agreed with the previous speaker that Mr. Nohrr’s reference at the last meeting to three-story complexes located next to single-family developments can’t be compared. Specifically, Tuscany has rentals between \$150 and \$200 more than the proposed Registry rental fees. She listed the amenities offered by Tuscany.

Ms. Vadnal expressed concern that the developer has made certain concessions, yet the site plan has not been changed. She asked Council to delay the final vote until the following items have been resolved: a drawing showing the exterior of the buildings, including landscaping; location of the sidewalks; size and location of playground and pool; purpose of clubhouse; relocation of dumpster; and requirement that the developer obtain the permit from the SJRWMD prior to development of the project.

Karen Strauss, 281 Cinnamon Lake Circle, quoted from the Zoning Code, Appendix B, Article XX, which requires uses to be harmonious to the adjacent uses and to the area; standards for traffic flow and control; location and size of recreation and open space areas; consideration of how development will impact the wetland, etc. Continuing, she noted that there is no standardized definition for harmonious or compatible. She asked Council to cite the criteria and factors used to determine that the site plan is harmonious and compatible. Additionally, she asked if the wetland and retention areas were excluded from the gross acreage when the density was calculated.

Ms. Strauss concluded by saying she believes this is a poor site plan that is not in harmony with the surrounding development. If it is to be an upscale development, she asked why details and drawings are not being provided. She requested Council delay the vote until all the facts have been obtained. Further, she recommended that the Code be amended to require buffering between apartments and single-family homes.

Mayor Buckley said the determination of harmonious is subjective. Members of the Planning and Zoning Board and City Council – by a 4-3 vote - decided that the plan is harmonious. The developer has reduced the density and made concessions that will improve traffic control.

William Austin, 305 Cinnamon Lake Circle, stated that he is concerned about the wetland. He reported that during a major storm or after there has been a lot of rain, the water from the Registry site begins encroaching on the properties along the wetland. He added that he does not believe that a retention pond will be able to handle the drainage because currently the entire area acts as a retention pond. He asked who would be liable for damage to the Cinnamon Cove properties if this project is built and water damages their homes.

Attorney Gougelman said the primary responsibility from a regulatory standpoint would be the SJRWMD. The City Engineering Department will also review the construction

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

plans, calculations, and conditions. The city will ensure that the SJRWMD standards are complied with.

Mr. Austin said the stormwater retention should be developed prior to the site plan being approved. Attorney Gougelman replied that, as a general rule, stormwater engineering does not occur until after site plan approval. The key reason is that stormwater retention cannot be planned until a developer has an idea of the number of units, general layout, etc.

Gary Vigeant, 4037 Bayberry Drive, referenced the access to Eber Road. He stated that according to FDOT the widening of Eber is low priority. Mr. Vigeant asked that new projects be put on hold until something is done about the traffic on Eber Road.

Mayor Buckley clarified that the development will also have access from Babcock Street. Mr. Hill added that Council has approved the engineering for widening Eber Road, which is a city roadway. That will be a project in the upcoming year or so.

Mr. Nohrr said that the area designated as a wetland is located in the southwest portion of the property. There has been significant discussion as to how the area became a wetland; the previous owner had an artesian well in that area. The wetland is in a degraded condition and is not properly functioning as a wetland. That wetland is going to be improved and become functional as a part of the overall plan.

Regarding drainage, Mr. Nohrr said he is not aware of any drainage from this property going south to Cinnamon Cove. He added that he has been led to believe that Cinnamon Cove drains in the direction of the Registry property. He stressed that when they receive permitting, the drainage on this property will not adversely impact Cinnamon Cove.

Mr. Nohrr referenced the comment made about campaign gifts. He said that the developer is located out of the area and made no gifts. He noted that Council has always voted its conscience and always will.

Continuing, Mr. Nohrr said the wetland was not excluded from the density calculation. The concessions they have made have been included in the ordinance; therefore, they are binding.

Mrs. Poole said that the developer will need a federal permit because this is a federal wetland. She asked Mr. Nohrr to point out the location of the playground on the site. Mr. Nohrr said he cannot provide the exact location – but it will be in view of the clubhouse.

Mr. Palmer stated that Council does not have to authorize the full density under this conditional use. Council could authorize 5 or 10 units per acre, as opposed to 15 units per acre. He added that in his opinion, too many units are proposed. The density is too great for the adjacent single-family housing area; the wetland is an issue; and three-story buildings are not compatible with the surrounding area. He concluded by saying he cannot vote for this item.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Moved by Contreras/Buckley for approval of Ordinance 2002-42 with the conditions proposed by the Planning and Zoning Board and the applicant's additional conditions.

Mrs. Poole said there will be no control over how many people will use these apartments. The Cinnamon Cove residents have a right to object to the density, noise and pollution. The amenities provided are not the amenities provided in an upscale development. Additionally, she said she believes the changes are not significant; the changes open an avenue for the attorney to have one more attempt to encourage Council to approve an incompatible use next to an established, single-family development.

Continuing, Mrs. Poole said that the permits – from SJRWMD and the federal government – need to be in place before this is considered. Council needs to make an educated decision backed with substantial evidence that is in the best interest of the city.

Mrs. Hand stated that she is opposed to this because of density, height, and the position of the buildings. She added that she does not believe Council has all the information it needs. She noted that the city needs to look at the Code regarding the location of apartment complexes next to single-family dwellings. She concluded by saying she is in favor of postponing this item.

Mayor Buckley said that the developer has asked to build within the City Code. He reduced the number of units, put in a second access road, moved the three-story buildings, enlarged the clubhouse, and made other concessions. He has agreed to allow the Cinnamon Cove residents to decide if the buffering is masonry or shrubbery. The Mayor added that the developer has gone out of his way to accommodate the residents.

Continuing, the Mayor said this is going to be a high scale apartment complex; the rents show that. Regarding drainage, the current Code does not require drainage permits to be in place before a site plan is approved.

Mrs. Palmer said there are quite a few apartment communities in the City of Melbourne that are not having problems, which bring property values down. She added that she has not found a legal reason to deny the conditional use.

Continuing, she pointed out that at one time the Cinnamon Cove property was undeveloped and just as wet. There were people in this community who probably did not want that property to develop. The developer for this item has agreed to turn buildings, provide buffering and make other concessions to lessen the impact. She noted that she would vote against the item if there was a good, legal reason. However, she does not want the taxpayers to pay for a lawsuit that will result in the developer being able to develop.

Mrs. Walker said she observed numerous two-story residences in Cinnamon Cove. She added that there are other uses that would be permitted on this property that would be allowed under the Zoning Code. She agreed with Mrs. Palmer's comment and said she, too, could not find a legal reason to vote against this.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Mrs. Poole reported that Mr. Palmer served on the Planning and Zoning Board for many years. She agreed with his comment that Council does not have to approve the density requested under this conditional use. And, she noted that these are legal reasons to deny the request.

Mrs. Palmer asked if the developer will have to receive approval from other agencies for the wetland. The Mayor said if permits are not issued, the developer cannot build.

Moved by Hand/Poole to postpone this until we get all the permits in question. The roll call vote was:

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

Nay: Contreras and Buckley

Motion carried. (See later action.)

*During the roll call vote, Mrs. Palmer asked Attorney Gougelman if Council can take this action. Attorney Gougelman said a motion to postpone supersedes a motion to approve.

Mrs. Braz asked for clarification on “the permits in question.” Mrs. Poole replied that they are the federal and SJRWMD permits. Mrs. Braz asked if it is the permits that relate to the wetland. Mayor Buckley said that seems to be the question. Mrs. Poole said the permits for the birds are included. The Mayor replied no and said it is the permits for the wetland. Mrs. Palmer asked for the motion to be clarified. Mr. Palmer said the motion refers to the permits from SJRWMD and the permits for the endangered species. Mrs. Poole said that may include the Corps of Engineers.

Mrs. Hand, as the maker of the motion, said it is the permits that relate to the wetland from the SJRWMD and the federal government.

Mrs. Braz said the applicant can’t receive a permit until they have a plan. The motion would require the developer to provide construction drawings, get those approved, receive permits, and then return. There are all kinds of permits associated with a development and she needs to know at what point the item should return to Council.

Mrs. Walker asked Mrs. Braz what permits she thinks should be included. Mrs. Braz said Council has raised concerns about the wetland; therefore, the SJRWMD would provide the conditions.

A brief discussion followed regarding the typical process followed with plans and permits.

Mrs. Palmer said if the developer does not receive all the proper permits, then he cannot build the project. Mrs. Braz said that is correct.

At this point, Mrs. Palmer asked for the vote to be taken again on the motion to postpone.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Mrs. Poole said she does not want the developer going to SJRWMD and saying that the city has approved the plan. Mrs. Palmer questioned how much weight Council's decision would have if the developer received state and federal permits first.

Mrs. Braz said her guess is that the applicant met with SJRWMD. The applicant should be able to report what steps they have taken. Mrs. Poole said this is not just a SJRWMD issue. This is a federal jurisdictional wetland.

Mrs. Hand stated that her motion stands.

Mayor Buckley called for a roll call vote on the motion since there was a question about that motion.

The roll call vote was:

Aye: E. Palmer, Poole, and Hand

Nay: Contreras, Walker, C. Palmer, and Buckley

Motion failed.

Mrs. Hand objected to the process and asked why another vote was taken. The Mayor replied that a question was raised as to what the motion included. One of the members who voted aye the first time didn't understand and asked for a re-vote.

A brief discussion followed on Robert's Rules of Order and the process followed. Attorney Gougelman said there were two ways to deal with this issue. He explained that the Mayor followed an informal approach. In the formal way, someone on the prevailing side of the motion to postpone would make a motion to reconsider. If that passed, it would be as if the motion to postpone never passed. Mrs. Walker said in effect, Council reconsidered.

Mayor Buckley said he would entertain a motion to reconsider.

Moved by C. Palmer/Walker to reconsider the vote on the postponement. The roll call vote was:

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

Nay: E. Palmer, Poole, and Hand

Motion carried.

The question was called on the motion to postpone. The roll call vote was:

Aye: E. Palmer, Poole, and Hand

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Nay: Contreras, Walker, C. Palmer, and Buckley

Motion failed.

The question was called on the motion to approve. The roll call vote was:

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

Nay: E. Palmer, Poole, and Hand

Motion carried.

Recessed: 9:46 p.m.

Reconvened: 9:56 p.m.

11. ORDINANCE NO. 2002-43: (Public Hearing/Second Reading) A proposed ordinance to amend the Melbourne City Code, Chapter 32, Utilities, by allowing individual property owners to pay for the extension of service over a period of five years. (Requested by City of Melbourne) (First Reading 6/11/2002)

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

Moved by Poole/E. Palmer for approval of Ordinance No. 2002-43. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2002-44: (Public Hearing/Second Reading) A proposed ordinance to amend Chapter 4, Amusements, as recommended by the City Code Review Committee, Section 3. (First Reading 6/11/02)

The attorney read Ordinance No. 2002-44 by title. There were no comments from the audience.

Moved by Contreras/Hand for approval of Ordinance No. 2002-44. The roll call vote was:

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

Nay: None

Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

NEW BUSINESS

13. COUNCIL ACTION RE: Consideration of issues related to Water and Sewer Bonds, Series 2002:
- a. A request for consideration of issuance of Water and Sewer Bonds, Series 2002 and approval of consultant fees.
 - b. Ordinance No. 2002-45: (First Reading) A proposed ordinance authorizing issuance of Water and Sewer Refunding and Improvement Revenue Bonds, Series 2002A, and Water and Sewer Refunding Revenue Bonds, Series 2002B.

Attorney Gougelman read Ordinance No. 2002-45 by title.

From the agenda report:

Staff has worked with various professionals to structure the Water and Sewer Refunding and Improvement Bonds proposed to be issued to achieve debt service savings, to provide construction proceeds, and to refund the existing bond ordinance to be released from burdensome and restrictive bond covenants. Now that we are ready to proceed with the bond issues, it is appropriate to identify the costs associated and seek approval of the necessary fees. Most of the fees are contingent upon the sale of the bonds. All of the fees will be paid from bond proceeds.

The memo from the Director of Finance (in the agenda package) describes the services provided and the fee basis for each service. Several of the firms have existing contracts with the city to perform these services, so this is essentially a ratification of the fees in their contracts. Fees for bond counsel, disclosure counsel, the financial advisor, and the underwriters are estimates based on the estimated par value of bonds to be issued. Fees for the rate consultant, independent auditor, and paying agent/registrar/escrow agent (trust account services) are firm fees that do not vary with the size of the bond issue. A summary of the fees based on the estimated refunding bonds is presented below:

	<u>2002A Bonds</u>	<u>2002B Bonds</u>
Estimated par value	\$28,625,000	\$22,181,775
Estimated Fees:		
Bond Counsel	\$ 35,781	\$ 27,727
Disclosure Counsel	28,625	22,182
Financial Advisor	28,625	22,182
Underwriters	171,750	133,091
Firm Fees:		
Rate Consultant	10,000	10,000
Independent Auditor	850	850
Trust accounts	<u>900</u>	<u>1,150</u>
Total estimated/firm fees	<u>\$276,531</u>	<u>\$217,182</u>

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Additionally, bond counsel, disclosure counsel and the financial advisor are to be reimbursed for out of pocket expenses not to exceed the maximums identified in their contracts of \$5,000, \$3,500, and \$5,000, respectively. The paying agent/registrar/escrow agent will also be reimbursed for out of pocket expenses, such as postage, wire transfers, and investment transactions.

Ordinance No. 2002-45 is an ordinance to codify, restate, and update the existing Water and Sewer Bond Ordinance No. 84-45, as amended. Staff and the bond financing team spent considerable time evaluating the existing ordinance and proposing improvements to make it less burdensome and restrictive to provide a sound framework for the issuance of bonds for many years in the future.

Mr. Hill introduced the item and Director of Finance, Amy Elliott, elaborated on her memorandum. As interest rates have fallen in the last year, staff has had many discussions with the financial advisor and the underwriter about the timing for refunding the Water and Sewer Refunding Revenue Bonds, Series 1992A and Series 1992C. These bonds were not eligible for refunding until this year because of IRS rules. Now is the time to address limitations in the underlying bond ordinance instead of continuing to operate under unnecessarily restrictive covenants. Because the bond ordinance represents the city's covenants with the bondholders, the only way to be released from those covenants is through refunding all the outstanding bonds.

The annual debt service on water and sewer bonds is \$6,561,264. After the 2002A and 2002B Bonds are issued the debt service is estimated to be \$6,545,910. Essentially, the debt service will be unchanged; however, the city will fund \$4.7 million of construction proceeds and significantly reduce the rate coverage requirements from 125% to 115%.

Responding to Mrs. Palmer, Ms. Elliott noted that reducing the coverage requirement takes a little pressure off the rates; the rates don't have to be as high. Once more than 50% of the bonds outstanding are issued under the new ordinance, we will be able to establish a rate stabilization fund. In favorable years, this will allow us to set aside a certain amount for the following years when revenues are not as bountiful.

Moved by Hand/Poole for approval of Ordinance No. 2002-45. Motion carried unanimously.

Moved by Contreras/E. Palmer for approval of the fees for the bond services. Motion carried unanimously.

14. RESOLUTION NO. 1765: A proposed resolution authorizing the distribution of Preliminary Official Statements for the purpose of marketing the City Water and Sewer Refunding and Improvement Revenue Bonds, Series 2002A and Water and Sewer Refunding Revenue Bonds Series 2002B

From the agenda report: The resolution authorizes the City Manager or the Director of Finance to deem the Preliminary Official Statements "final" except for "permitted

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

omissions” within the contemplation of Rule 15c2-12 of the Securities and Exchange Commission. This is a necessary step prior to the marketing of the bonds.

Moved by E. Palmer/Contreras for approval of Resolution No. 1765. Motion carried unanimously.

15. ORDINANCE NO. 2002-46: (Public Hearing/First Reading) An ordinance amending Chapter 32, Utilities, by adjusting water and sewer rates

Attorney Gougelman read the ordinance by title.

From the agenda report: Burton & Associates, the city’s rate consultant, has completed the Revenue Sufficiency Analysis. The report details the need to adopt a series of water and sewer rate increases beginning October 1, 2002. This is an ordinance to adopt the increases.

As discussed on several occasions this year, the Water and Sewer System has encountered difficult times because of the decrease in water consumption, decrease in interest rates, and increase in operating expenses, which differed from the assumptions used in 1998 to build a five year rate schedule.

The Revenue Sufficiency Analysis details these issues and describes the assumptions upon which this current financial forecast is made. The financial forecast is for the next five fiscal years and contemplates increases in operating expenses, improvement in working capital reserves, and financing a \$65.2 million capital improvement program. Staff has carefully reviewed this information and believes the basis for the consultant’s recommendations is accurate.

Burton & Associates recommends a supplemental rate increase on October 1, 2002 of 5.0% on both water and sewer rates in addition to the previously adopted 5.8% and 4.6% for water and sewer rates, respectively. Thereafter, the recommended rate increases are 5.0% on both water and sewer rates on October 1 of the next four fiscal years. The amounts for the subsequent four years is less of an increase than the previous four years.

The effect of the rate increases for October 1, 2002 is shown on the Comparison of Water and Sewer Rates provided in the agenda package. This is a comparison of the rates in effect as of October 1, 2001 in neighboring jurisdictions. For the typical residential consumption level of seven thousand gallons, Melbourne’s proposed October 1, 2002 rates will still be lower than the October 1, 2001 rates for West Melbourne, Palm Bay, and Titusville.

The proposed ordinance implements the rate increases effective October 1, 2002, 2003, 2004, 2005, and 2006, as recommended by Burton & Associates.

Robert Lockridge, Vice President, Burton & Associates, provided an overview of the Revenue Sufficiency Analysis and discussed the rate-setting process, how the model

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

works, significant assumptions, and recommended financial management plan. The benefits of the financial plan include better water quality (compliance with regulatory requirements); improved environmental quality (wastewater regulatory requirements); support of a 20-year consumptive use permit; continuing water conservation; strong financial position, which produces favorable credit terms; and a prudent investment in the future.

Mr. Contreras noted that many of the preemptive strikes taken by the city have enabled us to obtain a 20-year consumptive use permit. The costs associated with modernizing the plants are the result of regulatory requirements passed down to us. And, we are the victim of our water conservation effort. He thanked Mr. Lockridge for his presentation and said it makes sense.

Mrs. Poole said she has received many calls from people who are on a strict income and are hardly making it. She asked what can be done to address this.

Mr. Lockridge pointed out that the Water and Sewer Fund is an enterprise fund – it runs on its own revenue. He said one of the solutions is to set up a fund to assist people. He has done this with two cities he worked for in the past and would be able to assist the city in establishing the guidelines.

Mr. Palmer stated that we have a production capacity of 20 – 26 mgd and our consumption rate is at 14 – 15 mgd. He added that it appears the excess capacity has financial potential and could be sold. He said that although the increase is necessary, it is difficult.

Mr. Lockridge assured Council that Ms. Elliott worked the entire team over on this issue and the increase presented is as low as possible. He added that Melbourne in comparison to other utilities is in the middle of the pack with rates. Although this is not a perfect measure since other utilities are in various stages, it does show that we are not too far off the mark. The investments that we are making now along with the 20-year consumptive use permit will result in our rates eventually dropping in comparison to the other utilities.

Mrs. Poole pointed out that Cocoa has the lowest rates in the area. She asked if this is the result of Cocoa expanding before we did and having more customers. Mr. Lockridge said Cocoa has a lot of outside customers. They could be considered “a utility with a city.”

Discussion followed regarding Cocoa’s good fortune and surface water sources versus wells. Mr. Hill pointed out that in comparison to Cocoa the Melbourne rate is lower at the 1,000-gallon rate. The comparison table provides an indication of where we fit in the scheme of utilities and how efficiently we are providing the service.

Mayor Buckley opened the public hearing.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Gary Vigeant, 4037 Bayberry Drive, stated that this is a staggering increase. He asked how much is for new housing expansion.

Mr. Hill replied that we use impact fees to pay for expansion of the system. And, for the most part, expansion of capacity has occurred. When lines are run to provide service to a new subdivision, the cost is borne by the developer of that subdivision; the cost is not borne by existing customers.

With regard to wastewater treatment, the majority of projects in the last five years relate to regulatory requirements as opposed to expansion.

Mr. Hill pointed out that the city is required to actively campaign (spend money) to discourage the use of water. If we could sell more in bulk to other utilities, we would be in good shape.

Charles Barger, 810 Glenmore Circle, discussed the flow of water in the state and stressed that we are not short of water. He stated that there has been a lot of misinformation by the consultant; we have an undiminished supply of water.

Rollin Park, 314 W. Patrick Circle, said that no matter where the water flows, it has to be treated. He added that he sees the need. Regarding water quality, he asked why the water in his house smells like swamp water.

Alvern Kelso, 712 Tupelo Drive, stated that the water in Melbourne is some of the worst water he has tasted in his life. He noted that he has over \$2,500 in treatment equipment in his house; his dog won't drink water from the tap. The brass connections outside of his house, where the water is not treated, do not last over a year. He referenced the 30% increase and stated he is on a fixed income. He added that the increase is not fair.

Mr. Kelso stated that the water has so much chlorine in it that twice a year they have to open the fire hydrant with a crescent wrench to wash it out. He explained that they do this because the city does not respond to complaints.

Mr. Hill reported that opening the fire hydrant at a full rate may be creating the problems in the area. That action will stir up sedimentation in the lines. He noted that he will have someone from Utilities respond to test the water.

Mayor Buckley read the memorandum from the City Manager, which indicates that Peter Avner, 711 South Japonica Drive, called to say he lives on a fixed income and cannot afford the water and sewer rate increase.

Paul Cucchiara, 2257 Twilight Circle, informed Council that in New Jersey they aggressively sold water to other cities; that was the answer to their problem. It allowed the rates to remain low and reasonable. He noted that they do not have a problem with water quality. He believes that the water is pretty good. Additionally, the city flushes the hydrants about every two weeks.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Regarding the rate increases, Mr. Cucchiara said he believes they are horrendous. He questioned the figure of 4% used for annual inflation and said he believes that is subject to study. Regarding the comment about providing funding assistance, he noted that there are no free lunches – somebody pays.

Continuing, Mr. Cucchiara asked why the sewer rates are higher and discussed the use of meters for irrigation, reuse water, format of the public hearing notice, and the need for additional information.

Mrs. Palmer asked if the consultant's presentation could be added to the city's web site. Mr. Hill said there is already information on the web site; however, we can add additional information. He added that the public hearing notice is a state requirement and we had to follow a certain format. The Director of Finance will provide Mr. Cucchiara with a copy of Mr. Burton's information.

Continuing, Mr. Hill noted that the city does not have full reuse capacity. It is an alternative to disposing water down the well. In order to make reuse available, we would have to construct a whole new distribution system, which is extremely expensive. It is a variable utility that is difficult to operate. When it is wet, nobody wants it and when it is dry, everybody wants it. We have tried to expand the reuse system where it makes sense, but not to do it in such a manner that it puts a burden on the sewer rates.

Eric Lane, 1802 ½ Tangerine Street, referred to the water quality report recently mailed as a "slick pamphlet." He questioned the timing of the report when the city is considering a series of increases. Mr. Lane discussed a problem he had with a \$115 water bill. He said someone from the city indicated there would be a \$75 charge to respond if there was not a leak.

Continuing, Mr. Lane referenced the Federal Government Water Investment Act of 2002, which provides that a government cannot receive federal financing unless the government has considered privatizing the water system. He asked Council to investigate this and noted that Jacksonville went through this and their rates are expected to decrease by 25%.

John Wilhelm, 2013 Guava Avenue, agreed that the timing of the water quality report seems suspect and done in order to justify the rate increase. He added that he finds a 30% increase to be exorbitant. Mr. Wilhelm stated that he can't count the number of times he has been made sick by the water. The sediment in his toilet tank is thick and there are days when his water looks like tea. He has complained in the past and has been told that there is a broken water main down the street, yet the city provides no warning to its citizens that a water main is broken.

Mike Nowlin, 313 Live Oak Lane, noted that he has been out to the plants several times and he believes the city does an excellent job. He stated that he works in a utility industry that preaches conservation. Mr. Nowlin suggested the city look closer at the management of projects; change orders are constantly returning to Council.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

Moved by Buckley/Contreras for approval of Ordinance No. 2002-46.

Mrs. Poole asked if the city can stop offering the \$50 rebate for installation of conservation toilets. Mr. Hill said that is not much in the overall cost of the system. However, if this is a program that Council feels has reached the end of its useful life, we can stop.

Mrs. Poole referenced a comment made by Mr. Lockridge during his presentation about jurisdictions from Central Florida that will be seeking to install wells in our area. She asked if we can sell our extra water to those utilities in order to keep our rates down. Mr. Hill said we can explore other alternatives. He pointed out that there is a transportation element; someone will have to build the transmission lines. Mrs. Poole said the other utilities seeking our water should have to build the transmission lines.

Mrs. Palmer asked, aside from the capital improvement costs for the new system, if the surface water plant is more or less expensive to operate. Mr. Hill said it is more expensive now because there are two systems in place. Overall, however, the Actiflo system should end up being cheaper. When we built the reverse osmosis plant, the anticipation was that it would be more expensive than the surface water plant. It has worked out to be about the same price.

Mrs. Palmer asked if the changes at the surface water plant have been factored in to our future projections. Mr. Hill said we have factored in our expectations; however, as to whether it will be more or less efficient, we can't say at this point.

Mr. Palmer pointed out that in addition to replacing a 50-year old water plant, we also had to replace a 50-year old distribution system. He noted that there is still a lot of work to do on that and that adds to the cost.

Mrs. Walker asked if excessive conservation has created problems for us. Mr. Hill said that along with a decrease in interest rates.

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

16. COUNCIL ACTION RE: Consent Agenda

Moved by E. Palmer/Contreras for approval of 16 'a' through 'd' as recommended.

Mr. Palmer said he would like to discuss item "d." The following substitute motion was made:

Moved by E. Palmer/Contreras for approval of items "a – c." Motion carried unanimously.

Mrs. Hand asked about item "d." Mayor Buckley said that item will be discussed at the next Council meeting.

The consent agenda was approved as follows:

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

- a. Resolution No. 1766: A proposed resolution authorizing application for phase seven of the Local Law Enforcement Block Grant (LLEBG) through the U.S. Department of Justice in the amount of \$175,169 to purchase radios and to enhance security at police buildings.
- b. Contract for Lipscomb Park Sidewalk Construction, Project No. C09803, J & S Curb, Rockledge, FL - \$43,037.
- c. A request for renewal of agreements with Brevard County for six School Resource Officers and one Truancy Interdiction Officer.
- d. A request for Council approval of funding the 2003 Water Conservation Campaign of the St. Johns River Water Management District in the amount of \$7,000.

Note: Item “d” will be considered at the July 9 meeting.

Mayor Buckley reported that the applicant for Item 22 has asked if Council would move that item up on the agenda for consideration. They have some information (as a result of Council consideration) that is due in Tallahassee tomorrow morning. Mrs. Poole said she has numerous questions on that project. By consensus Council denied the request to move the item on the agenda.

17. FINAL PLAT APPROVAL (SD-1999-02A/OCEANSIDE VILLAGE PHASE IIIA SUBDIVISION): (Public Hearing) A request for final plat approval on a 29.607-acre parcel zoned R-2 (Cap 3) (One-, Two-, and Multiple-Family Residential with a cap of three units per acre), located south of Eau Gallie Boulevard and east of Riverside Drive. (Owner/Applicant – Oceanside Village, Inc.) (Representative – Lee Engineering) (P&Z 6/6/2002)

Mrs. Palmer disclosed that she has driven by the property a number of times.

Mrs. Braz reviewed the agenda report. The property has a future land use of Low Density Residential. The property to the northeast is zoned R-2 (Cap 10) and is part of the Oceanside project for future development. Commercial development is located to the north, single-family residential uses are located along the southwest side, a church is located to the south and Phase I and II of Oceanside Village (multi-family development) is located to the east.

The proposed plat for Oceanside Village, Phase IIIA Subdivision provides for 75 lots on the 29.607-acre parcel representing a density of 2.53 units per acre. Three tracts totaling 10.43 acres are included with the plat. Tract A (3.91 acres) and Tract B (6.39 acres) will consist of stormwater retention ponds and a private street system. Tract C (.164 acres) will consist of a green area buffer for landscape screening.

The applicant provided an Environmental Impact Assessment Report with the preliminary plat. This report details the wetland areas on site, geologic and vegetative communities,

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

and endangered or threatened species. A total of approximately 2.5 acres of isolated wetland swales were located just west of the property. The Florida Scrub Jay and the Gopher Tortoise were located on site within the scrub communities; proper mitigation permits were obtained.

The drainage system proposed with the construction plans along the rear of Lots 61-75 has not been fully permitted. The cost of the system cannot be determined until it is designed and therefore, bonded. It would be difficult to construct the piped drainage easement if the lots contained homes. Therefore, staff is proposing that a restriction be included as a condition of approval that Lots 61-75 not be sold from the developer to other interest until such time that permitting of the drainage easement improvements is obtained. St. Johns River Water Management District and the City must approve permits.

The proposed plat complies with City Code, the requirements of Ordinance No. 92-05, and the approved preliminary plat.

The Planning and Zoning Board recommended approval of SD-1999-02A, final plat for Oceanside Village, Phase IIIA Subdivision, consisting of a two-sheet plat prepared by William A. Mott Land Surveying of Satellite Beach, Florida, with Project Number 2020128, replatting a 29.607-acre parcel of land zoned R-2 (Cap 3), a portion of Aspinwall Subdivision, located south of Eau Gallie Boulevard and east of North Riverside Drive, with the findings outlined in the agenda package and the following conditions:

- a. A change to the final plat will require reevaluation of the plat by the City Engineering and Planning and Economic Development Departments. Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease by 5% in the amount of open space or vegetative areas on site; 2) an increase in the total number of units shown on the final plat; or 3) any decrease in the number of vehicular or pedestrian access points to/from the subdivision.
- b. The applicant shall provide a form of surety equal to 110 percent of the construction cost as required by City Code, Chapter 29, Section 29-5 (c) (4) c. Such surety shall be in form acceptable to the City Manager and City Attorney.
- c. Provide a Stormwater Maintenance Agreement in form and substance acceptable to the City Manager and City Attorney.
- d. Provide an executed water and sewer agreement and a utility easement for public utilities located within the private streets and within easements.
- e. Provide warranty deeds conveying Tracts A, B, and C to the homeowners' association.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

- f. The applicant shall enter into an agreement with the City to prohibit the sale of Lots 61-75 until such time that final permits are issued for the drainage system design.
- g. Provide a Bill of Sale for the water and sewer lines
- h. Provide the Covenants, Conditions and Restrictions and/or the supplement of the Covenants, Conditions and Restrictions.

At this point, Mayor Buckley announced that this will be the last item covered. The remainder of the items will be heard on Friday, June 28, at 7:30 p.m.

Rob Lee, Lee Engineering, civil engineer of record, asked for final plat approval and agreed with the stipulations.

Mrs. Poole asked if any of the scrub jays remained on the property. Mr. Lee said not that he has noticed.

Moved by Hand/E. Palmer for approval of SD-1999-02A subject to the proposed stipulations.

Mrs. Poole said she will not vote for an item that destroys habitat.

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

At this point, a person representing Item 22, Prairie Trace Apartments, informed Council that they have a form due in Tallahassee tomorrow morning that will determine the future of this entire development.

Mayor Buckley said Council declined the request and decided not to go beyond 12:00 a.m.

18. ORDINANCE NO. 2002-47 (CU-2002-05/SP-2002-10/PRINCETON MINI-STORAGE: (Public Hearing/First Reading) A proposed ordinance for a conditional use for a mini-storage facility on a 4.123-acre portion of a lot on a commercial development site in the C-1 (Neighborhood Commercial) zoning district, located on the west side of Dairy Road, north of Palm Bay Road and south of Madison Road. (Owner/Applicant – Princeton Florida Associates, L.L.C.) (Representative – Robert Lee, Lee Engineering, Inc.) (P&Z 6/6/2002)

Attorney Gougelman read Ordinance No. 2002-47 by title.

Mrs. Braz briefed Council. The property is now vacant and was annexed into the city in 1998. Mixed use Commercial/Medium Density Residential land use and C-1 zoning was established shortly afterwards. A site plan was approved for an apartment complex on the property to the west in 2000.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

The site is zoned C-1 and abuts a future multi-family residential community to the west (Princeton Apartments), which is zoned R-2 (Cap 10) with a future land use designation of Medium Density Residential. The property located to the south is vacant and just to the south of this property is the site of the new BJ's Wholesale Store. The property to the east across Dairy Road is zoned R-2 (Cap 6) and is the site of the recently approved Sunny Lakes Village Townhouses Subdivision. The property to the north across Madison Road is located in the county and is zoned AU (Agricultural Residential).

City Code permits a mini-storage facility "provided that the project is properly landscaped and screened from abutting properties." The development must meet all setback and building size requirements/restrictions of the Code. In this case, the building must be setback a minimum of 15 feet from the west property line (side yard) and at least 20 feet from the east and north property lines. A joint driveway with the apartment complex is proposed along the south property line.

The applicant proposes to develop a mostly single-story, five building mini-warehouse/storage facility with a total of 51,028 square feet. The facility would contain 440 rental units and an office requiring 22 parking spaces. Of the 440 rental units, 102 would be air-conditioned/climate controlled. These would be accessible through central corridors or hallways with doors opening into the central hallways. The proposed mini-storage, parking and other impervious areas would cover 122,505 sq. ft. The height of four of the buildings would be one story and the larger building, which will contain the climate-controlled units, would be two stories and be a maximum of 25 feet in height. The applicant proposes to provide a hedgerow and tree plantings along the boundaries of the site. The building walls will face to the outside of the site. No rollup-doors or other types of storage unit access doors would face to the outside of the site or to other properties or rights-of-way. Stormwater treatment will be provided from the retention system located within the Princeton Apartments site. The Princeton Apartments site discharges into the Dairy Road drainage system.

The project is compatible with the adjacent and area developments in the neighborhood and matches the character of the area. The property has a mixed use Commercial/Medium Density Residential land use and is zoned C-1. Dairy Road is a scenic corridor. The project, including the landscaping and signs, must comply with the standards adopted by council for scenic corridors.

The project is located within the Joint Planning Agreement review area. County staff provided comments on the proposal. County comments primarily apply to construction standards and permitting. There were no comments concerning the use or design standards that have not been made a part of the project design such as driveway and stormwater permits.

The requested conditional use will not be injurious to the neighborhood or otherwise detrimental to the public welfare and the use will be in harmony with the general purpose of the zoning ordinance since the storage units will serve the area businesses and residential developments. At least two apartment buildings have been developed or are under development in the immediate vicinity and having storage space for these and

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

other residential developing properties in the area will provide a needed activity to serve the additional properties. The character and use of adjoining buildings and those in the vicinity will match the intensity of development proposed on this site and the number of persons residing or working on the site, buildings or upon the land subject to the development proposal and traffic conditions in the vicinity will be less than most other uses that could be developed on the site. The project complies with the minimum requirements of the City's Comprehensive Plan, Zoning Code and other land development regulations. The applicant provided an Environmental Impact Assessment Report with the site plan for Princeton Apartments. The site has been cleared as part of the site preparation for the apartment complex.

The Planning and Zoning Board recommended approval of CU-2002-05, with the findings listed in the agenda package and the following conditions:

a. The conditional use and the proposed plan of development shall be consistent with the one-page site plan (SP-2002-10) for Princeton Mini-Storage, prepared by Lee Engineering, Inc., of Indialantic, Florida, dated April 4, 2002, and with a revision date of May 24, 2002.

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

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of 5% of the open space or vegetative areas on site; 2) any increase in the number of access points to Dairy Road shown on the site plan; 3) a change which would reduce the landscape buffers along the boundaries of the site; or 4) any increase in the size, height or dimensions of the storage unit buildings.

c. Storage units only shall be accessible from either a central interior building corridor or interior driveways and no rental unit shall contain roll-up doors facing a public street or the apartment buildings located to the west.

d. The vegetative buffer along the total length of the west property line shall be at least six feet in height or capable of growing to a height of six feet within two years.

Mrs. Poole asked if this is part of the Princeton Apartments. From the audience a gentleman responded yes, it is the same ownership. Mrs. Poole asked if this is in a wetland. Mrs. Braz replied no.

Mrs. Poole referenced illegal filling/excavating along Dairy Road. Mr. Hill reported that there has been no final resolution of that. The city asked FDEP to become involved and we had discussions with the county about taking enforcement action. In terms of this site, he does not believe there has been any clearing or development.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

A brief discussion followed.

Moved by Hand/E. Palmer to recess until Friday, June 28, at 7:30 p.m. Motion carried unanimously.

The remainder of item 18 and items 19 – 29 will be considered at the June 28 recessed regular meeting.

19. ORDINANCE NOS. 2002-48, 2002-49, AND 2002-50 (AR-2002-139/CPA-2002-05/Z-2002-927): (Public Hearings/First Readings) Ordinances providing for the annexation of two parcels and adjacent right-of-way (.95 acres) totaling 5.529 acres, establishing an Industrial land use on the two parcels totaling 4.58 acres and establishing M-1 (Light Industrial) zoning on the same two parcels, located on the west side of North Drive, south of Sarno Road and north of Dow Road. (Owners/Applicants – CIA Development, Inc. and NEOS Technologies, Inc.) (Representative – John Newton) (P&Z 6/6/2002)
 - a. Ordinance No. 2002-48: An ordinance providing for the annexation of the property (AR-2002-139).
 - b. Ordinance No. 2002-49: An ordinance establishing Industrial land use on the property (CPA-2002-05).
 - c. Ordinance No. 2002-50: An ordinance establishing M-1 (Light Industrial) zoning on the property (Z-2002-927)

20. FINAL PLAT APPROVAL (SD-2002-02A/EAGLE LAKE EAST, PHASE ONE SUBDIVISION): (Public Hearing) A request for final plat approval for Eagle Lake East, Phase One Subdivision, on a 47.92-acre parcel zoned P.U.D. (Planned Unit Development), located on the west side of Lipscomb Street, south of Pirate Lane. (Owners – PRN Real Estate & Investments, Ltd. and BMI Investments) (Applicant - Eagle Lake Two Development Company) (Representative - Massimo Bosso) (P&Z 6/6/2002)

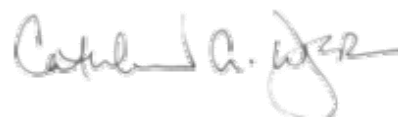
21. ORDINANCE NO. 2002-51 (Z-2002-929/MERRILL LYNCH PROPERTY): (Public Hearing/First Reading) An ordinance changing the zoning from R-2 (Cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) to R-1B (Single-Family Residential) zoning on a 15.12-acre parcel, located on the west side of Stack Boulevard and on the south side of Eber Road, (Owner – Merrill, Lynch, Pierce, Fenner & Smith, Inc.) (Applicant - William C. Potter, Trustee) (P&Z 6/6/2002)

22. SITE PLAN APPROVAL (SP-2002-14/PRAIRIE TRACE APARTMENTS): (Public Hearing) A request for site plan approval for a 344-unit apartment complex in an R-2 (Cap 8) and R-2 (Cap 13) (One-, Two- and Multiple-Family Residential with a cap of 8 units per acre and 13 units per acre), located on a 38.5-acre parcel on the east side of Stewart Road and on the north side of Lake Washington Road. (Owner – Brefrank, Inc.) (Applicant - Masteller & Moler, Inc) (Representative – Earl H. Masteller) (P&Z 6/6/2002)

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JUNE 25, 2002

23. COUNCIL ACTION RE: A request for an off premise directional sign to be placed on the southeast corner of Hibiscus Boulevard and Apollo Boulevard. (Requested by Paul Durney and Suzanne Winston)
24. COUNCIL ACTION RE: A request for continued assistance to Myrtle Bartlett, James Ferraro, and Glenda Spiller in the event that permanently subsidized housing does not materialize for them prior to the expiration of their HOME Program Tenant Based Rental Assistance.
25. COUNCIL ACTION RE: A request for authorization to purchase property at the corner of Highland Avenue and Eau Gallie Boulevard.
26. COUNCIL ACTION RE: A request by the Brevard Museum of Art and Science for funding in the amount of \$15,000.
27. COUNCIL ACTION RE: Appointment of four regular members and two alternate members to the Code Enforcement Board
- 27.1 COUNCIL ACTION RE: Utilization of Special Legal Counsel in the matter of Florida Recyclers, Inc. (Added to the agenda)
28. PETITIONS, REMONSTRANCES AND COMMUNICATIONS
29. ADJOURNMENT

During consideration of Item 18, Council recessed at 12:02 a.m. until Friday, June 28, at 7:30 p.m.



City Clerk – 7/3/2002

Approved by Council _____