

CITY OF MELBOURNE, FLORIDA  
MINUTES – RECESSED REGULAR MEETING BEFORE CITY COUNCIL  
JUNE 28, 2002

A recessed 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. All present gave the Pledge of Allegiance to the Flag of the United States of America.

Present:	John A. Buckley	Mayor
	Loretta Isenberg-Hand	Vice Mayor, District 6
	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

Absent: Richard Contreras Council Member, District 1 (out of town)

Mrs. Hand referenced the action taken by Council at the June 25 meeting on the Registry Apartments. She said she received a call from resident Connie Vadnal who asked if the motion to be postponed can be reconsidered. Attorney Gougelman said a member from the prevailing side of the motion to approve the ordinance could make a motion to reconsider. Any member can make a motion to rescind; however, that would take a two-thirds vote.

A brief discussion followed regarding the process followed at the June 25 meeting. Mrs. Poole said that there should not have been any discussion on the item after there was a motion to postpone. Mayor Buckley said the City Attorney previously indicated that the action taken was proper. The Mayor pointed out that Council uses Robert's Rules of Order as a guide. The ordinance has been approved.

A brief discussion followed. No action was taken. Mayor Buckley continued with the recessed regular meeting agenda.

Note: Items 1 through 17 were heard at the June 25, 2002 regular meeting.

18. ORDINANCE NO. 2002-47 (CU-2002-05/SP-2002-10/PRINCETON MINI-STORAGE): (Public Hearing/First Reading) An ordinance granting 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)

Note: At the June 25 meeting, Attorney Gougelman read the ordinance by title and Mrs. Braz reviewed the agenda report.

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The Planning and Zoning Board recommended approval of CU-2002-05, with the findings as 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.

Mayor Buckley referenced the discussion that started at the June 25 meeting (regarding materials being dumped into the retention pond) and said it relates to the apartments; this item is for the mini-storage facility. Mrs. Poole clarified that both developments are using the same retention area and that is where the dumping occurred.

Robert Lee, Lee Engineering, engineer of record on the project, stated that he is representing the applicant, who was not able to attend. Regarding the issue about materials being placed at the site, he said he spoke with the applicant and the owner. He noted that the applicant was working with the city to place concrete debris left over from a nearby city lift station project. He added that the concrete fill is clean fill. FDEP has been out to the site and so far no wrongful violations or any problems have been presented. He added that if the issue is outstanding, it is an issue for Code Enforcement; it should not impact consideration of this site plan.

Mrs. Poole reported that two witnesses saw debris being trucked in from another county and from a recycling facility. The pictures are very explicit and the material dumped is not just rubble from a lift station. She agreed that materials can be placed on the sides of a retention pond; however, they cannot be placed on the bottom.

Mr. Hill said that an anonymous tipster submitted pictures to Mrs. Poole and Mr. Contreras. One set was turned over to FDEP and the City Engineer has the other set.

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The pictures show a number of different items of debris and the allegation is that debris is being brought in from outside the city and the county. It is the owner's contention that he allowed debris (from a lift station) to be buried on behalf of the city. Our contractor assured us that is not correct. Other debris is from excavation and connection of the sewer lines to the lift station from Princeton Apartments. If that is the case, that is permissible under the FDEP guidelines. The contractor or owner of the site can bury debris from the property or adjacent property.

A special agent with FDEP visited the site. He did not see any violations and has turned the case over to the Solid Waste Regulatory Department. It would be a violation if debris was being trucked in from off site, as has been alleged. However, the FDEP agent did not see or observe that violation. The city does not have any Code restrictions regarding that. Brevard County has land-filling regulations and the City Attorney has written Brevard County asking whether they would enforce those regulations in the city. However, the controlling entity appears to be FDEP.

Attorney Gougelman elaborated on his contact with Brevard County Code Enforcement. He noted that the city asked the county to take action pursuant to their ordinance. The county ordinance is effective in the incorporated and unincorporated areas of the county. Bobby Bowen, Brevard County Code Enforcement, advised us that he thought the city Code Enforcement Officer has the authority to enforce the county ordinance. Attorney Gougelman said he disagrees and noted that there is no reference to any case law, opinion, etc. that would support that position.

Mrs. Hand asked why Council was not copied on the material delivered to Mrs. Poole and Mr. Contreras. Mr. Hill said the pictures were delivered prior to the mini-storage becoming an agenda item. Staff took appropriate action and turned the material over to FDEP.

Mrs. Poole said since Council Member Contreras is not present and the pictures are not available at this meeting for Council to view, she would like the item postponed until the next meeting.

Moved by Poole/Hand to postpone this item until the July 9 meeting.

Mrs. Palmer asked if we should wait until the Solid Waste Regulatory Department of FDEP finishes its review. Mr. Hill said Council needs to determine if the activities related to the pond affect the site plan on the agenda.

The question was called. The roll call vote was:

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

Nay: Buckley

Motion carried.

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Mayor Buckley said he feels this issue does not relate to the item on the agenda.

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)

Mr. Gougelman read each ordinance by title. Mrs. Braz reviewed the agenda report and noted that the property is vacant. She discussed the history, surrounding zoning, and land use. The property owners are seeking the annexation in order to receive city services, including water, sewer, police, and fire.

Following annexation, the property could be developed for industrial uses under the city's land development regulations. Water and sewer service is available to the property along North Drive. The annexation will generate approximately \$540 per year in revenue to the city and even more when developed. The annexation complies with the general findings required by code and state statute. Once the property and the street are annexed, the opportunity to annex the larger vacant parcel to the west will be more likely. The unnamed street is now barricaded and would be opened to public use and become a street to be maintained by the city as part of the Joint Planning Agreement with the county. This street provides the only access to the property to the west.

The Planning and Zoning Board recommended approval of AR-2002-139, CPA-2002-05, and Z-2002-927 with the findings listed in the agenda package.

Mayor Buckley opened the public hearing. There were no comments.

Moved by Hand/E. Palmer for approval of Ordinance No. 2002-48. Motion carried unanimously.

Moved by E. Palmer/Poole for approval of Ordinance No. 2002-49. Motion carried unanimously.

Moved by Walker/E. Palmer for approval of Ordinance No. 2002-50. Motion carried unanimously.

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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)

Mrs. Braz briefed Council, discussed the history of the property, and the land use. She noted that Council approved the preliminary plat on March 26, 2002.

The subdivision will be developed in two phases. Phase One, which includes the northern portion of the development, will contain 103 lots. Phase Two will consist of the southern 103 lots and is being platted as a future development (Tract L). The retention and drainage system will be developed as part of Phase One within Tracts F, G, H, and I, with pier extensions into the water within a common area corridor that will permit the retention ponds to be counted as meeting one-half of the code required useable open space. Tracts A and B will be used for landscaping areas and a subdivision entrance sign. Tract I will contain a recreation walkway, similar to the one constructed with Eagle Lake Two Subdivision and be included as part of the Code required useable open space. Tract J will be conveyed to the city as a lift station. Tract K will be reserved for road right-of-way and developed when Phase Two is re-platted. All tracts will be owned and maintained by the homeowners' association with the exception of Tracts J and K.

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

Seven gopher tortoise burrows were found on the property. It is thought that up to 20 tortoises are located on the site. Removal or taking of these tortoises will require a permit from the Florida Fish and Wildlife Conservation Commission. The applicant is applying for permits to relocate/take these tortoises. This was a requirement of preliminary plat approval. Additionally, there are several documents that require review and approval of the city.

The proposed final plat is consistent with the City Code and the approved preliminary plat. The Planning and Zoning Board recommended approval of SD-2002-02A, Final Plat for Eagle Lake East, Phase One Subdivision, consisting of a three-sheet plan prepared by William Mott Land Surveying, Inc., of Satellite Beach, Florida, and signed and sealed on May 22, 2002, with the findings listed in the agenda package and the following conditions:

- a. Any change to the final plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department.

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Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the final plat includes, but is not limited to: 1) any increase or decrease in the number of access points including public or private streets to or from the subdivision; or 2) an increase of more than two lots.

- b. Prior to any construction or clearing activity on the site, the owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.
- c. 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.
- d. Provide a Stormwater Maintenance Agreement in form and substance acceptable to the City Manager and City Attorney.
- e. Provide a recent title opinion in accordance with City Code.
- f. Provide an executed water and sewer agreement.
- g. Provide warranty deeds conveying Tracts A, B, F, G, H and I to the homeowners' association.
- h. Provide a warranty deed in form and substance acceptable to the City Attorney and City Manager conveying Tract J to the City of Melbourne.
- i. Provide a warranty deed or other acceptable form of deed acceptable to the City Attorney and City Manager conveying Tract K as public right-of-way in favor of the City of Melbourne.
- j. Provide a Bill of Sale for the water and sewer lines.

Mrs. Braz confirmed for Mrs. Hand that the eagle's nest is located far enough away that there are no stipulations related to the nest.

Mrs. Poole said she intends to ask the applicant if they plan to take or relocate the gopher tortoises and if they plan to check for scrub jays. Mrs. Braz pointed out that the property is not listed on the scrub jay maps. Mrs. Poole replied that the scrub jays have similar habitat (as the gopher tortoises).

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Max Bosso, 1688 W. Hibiscus Boulevard, stated that he agrees with all the stipulations. He added that they have already received the permit from the Florida Fish and Wildlife Conservation Commission. He reported that Biological Research Associates has relocated the gopher tortoises.

Wendy Swindell, Senior Ecologist, Biological Research Associates, Vero Beach, reported that two gopher tortoises were relocated to the buffer areas along the perimeter of the site. She confirmed that they were not harmed.

Mrs. Walker asked how many burrows were found. Ms. Swindell said a total of 18; however, many were inactive. She stressed that they dug out all the burrows.

Moved by E. Palmer/C. Palmer for final plat approval of SD-2002-02A subject to the proposed conditions.

Mrs. Poole expressed concern about only two gopher tortoises out of 18 burrows being relocated. She noted that sometimes they go 70' into the ground. Ms. Swindell responded that they were very careful to relocate everything. She noted that a camera was inserted into the burrows as part of the process.

The question was called. Motion carried unanimously.

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)

Attorney Gougelman read Ordinance No. 2002-51 by title.

Mrs. Braz briefed Council, discussed the history of the property, surrounding zoning and land use. The applicant is requesting the rezoning in order to develop the site for a single-family subdivision with lots very similar in size to the subdivisions built to the west and north of this property. The maximum number of units on the 15.12-acre parcel would be 90 units.

The requested zoning will not have an adverse affect on adjacent properties particularly since two of the adjacent developments are constructed with zoning regulations identical to or very similar to the applicants requested zoning. The proposed rezoning is consistent with the Comprehensive Plan Future Land Use Element and Future Land Use Map.

The Planning and Zoning Board recommended approval of Z-2001-929, with the findings listed in the agenda package.

There were no comments from the public.

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Moved by Hand/E. Palmer for approval of Ordinance 2002-51. Motion carried unanimously.

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 eight 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)

Mrs. Braz briefed Council and stated that the land use is Low Density Residential but a site-specific policy permits the property to be developed at the designated densities referenced above. In 1986 a Development Agreement encompassing all of the properties on the east side of Stewart Road between Parkway Drive and lake Washington Road was approved. In 2001 Council approved a plan amendment that created a policy to implement the intent of that agreement.

The property to the south is vacant. The property to the west across Stewart Road is the Croton Park and Greenbriar Village Subdivisions zoned R-1A (Single-Family Residential) and R-2 (Cap 6), respectively. The property to the north is Monaco Estates Subdivision zoned R-2 (Cap 6). The property to the east is zoned M-1 and contains vacant land and several industrial uses.

The proposed plan consists of a 344-unit apartment complex with 33 buildings. Phase One will contain 184 units and Phase Two will contain 160 units. A total of 708 parking spaces will be provided for the 344 units, 20 more than required by Code. This includes 17 spaces immediately adjacent to the clubhouse. An internal sidewalk system will connect the buildings, parking areas and clubhouse/recreation amenities and provide a connection to the existing public sidewalk along Stewart Road and the proposed sidewalk along Lake Washington Road.

The development will generate approximately 2,160 daily trips. Two access driveways will be provided – one along Stewart Road and one along Lake Washington Road. The major driveway will be located on Stewart Road in compliance with the Development Agreement. A second driveway will be provided on Lake Washington Road. This driveway would be a shared drive with the proposed church. The applicant will need to acquire an easement in order to develop and open the Lake Washington Road driveway. Both Lake Washington Road and Stewart Road are operating well below the maximum acceptable volume for the adopted level of service and will easily accommodate the additional traffic from this development.

The buildings will be set back a minimum of 51 feet from the Stewart Road right-of-way as required by Ordinance No. 86-06; 60 feet from the Lake Washington Road right-of-way; a minimum of 112.5 feet from the property to the south; a minimum of 25 feet for the single-story units; and 100.8 feet for the multi-story units from the properties to the north. This additional setback creates the opportunity to provide a 25-foot wide undisturbed buffer along Stewart Road and to preserve existing native vegetation in the 25-foot wide

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buffer. The maximum building heights will be 38.5 feet for the three-story buildings. A building setback a minimum of 25 feet wide will be provided between the Monaco Estates Subdivision and the closest one-story type apartment buildings. In other areas, the building setbacks will be substantially greater (172.7 feet, 100.6 feet, and 158.4 feet). The minimum setback required by Code for two-story buildings is 35 feet and 45 feet for three-story buildings. The proposed setbacks far exceed the minimum required by Code.

The complex will provide on site recreation features including a 4,567 square foot clubhouse with an exercise room, a swimming pool, two tot lot playgrounds, a volleyball court, and a walking path/exercise trail around the lake.

The Environmental Impact Assessment (EIA) report indicates that threatened species (scrub jay and gopher tortoises) are on the property. Additionally, an endangered woodstork was seen on the property. The tree survey indicates the site is mostly covered with pines, palmetto scrub, willow, wax myrtle, Brazilian pepper, melaleuca, and a few oaks. A wetland exists in the north central, northeast, and southeast portions of the site. These wetlands will be taken and will require permits from St. Johns River Water Management District and possibly the Corps of Engineers. Permits will also be required from the U. S. Fish and Wildlife Service to take and mitigate for the loss of scrub jay habitat and from the Florida Fish and Wildlife Conservation Commission to take or relocate gopher tortoises.

Two retention basins will provide stormwater treatment with discharge into the public drainage system to the east along Avocado Avenue. A portion of the site overlays an aquifer recharge area but not to the extent that it violates a pervious coverage restriction in this area.

The site will be developed with less density (344 units) than what could be constructed on the site under the existing Code (399 units). This use would generate approximately 346 less trips per day as a 344-unit apartment complex than if built as a 399-unit complex. Under the Comprehensive Plan, Future Land Use Element, the site is designated for low density residential land use but with a site specific policy that permits medium density development of up to 8 and 13 units per acre, respectively on the two parcels. The plan would be constructed with an average of 8.94 units per acre. The development would be less intensive in scale than other apartment developments located along Lake Washington Road.

The Planning and Zoning Board recommended approval of SP-2002-14, site plan for Prairie Trace Apartments consisting of a two-page plan prepared by Masteller & Moler, Inc., of Vero Beach, Florida, with Drawing Number 0204, dated May 29, 2002, with the findings as listed in the agenda package and the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the 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

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substantial change includes, but is not limited to: 1) a decrease of 5% of the open space or vegetative areas on site; 2) any change in the number or use of access points shown on the site plan; or 3) an increase in building size, height, or an increase by more than ten percent in the number of units.

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

Initially, trees shall only be removed for driveways, drainage facilities, and paved parking spaces and aisles. Trees in the footprint of the structure shall be removed only in conjunction with a building permit. All trees to be removed shall be identified by Code Enforcement personnel and an evaluation shall be made to determine the possibility of saving hardwood trees. Trees to be preserved must be protected by barricades to the drip line during construction. All invasive non-native vegetation shall be removed from the site. A natural existing native-vegetation buffer 25 feet in width along the length of Stewart Road shall be preserved.

- c. The applicant shall obtain appropriate environmental permits from the Florida Fish and Wildlife Conservation Commission to relocate or take gopher tortoises and from the U. S. Fish and Wildlife Service to take scrub jays and scrub jay habitat. Appropriate permits must also be obtained from the St. Johns River Water Management District and/or the Corps of Engineers to remove wetlands. Should threatened or endangered species be found on the site after commencement of construction for which a permit has not been granted then the owner/applicant shall cease construction until the appropriate permits are obtained.
- d. The applicant shall obtain the necessary easements from the adjacent property owner to the southeast to construct the driveway connection to Lake Washington Road.
- e. City staff shall coordinate with the applicant to align the Stewart Road driveway with West Shores Road if Council wishes to amend Ordinance No. 86-06, which prohibits access to Stewart Road from Parcel D.

Subsequent to the Planning and Zoning Board meeting, staff learned that the developers intend to pursue the designation of Prairie Trace as an affordable housing project. The applicant is not requesting any financial assistance or density bonus from the city. Staff believes that the following additional stipulation should be added to restrict the project from becoming a non-profit development and therefore taken off the tax rolls:

- f. The developers and/or successors or assigns will not seek an ad valorem tax exemption on this property.

Mayor Buckley pointed out that West Shores Road is not a through street. He said he does not understand why they want to make this alignment. Mrs. Poole stated that Mr.

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Outlaw, a Planning and Zoning Board member, wanted this stipulation. Mrs. Braz confirmed for the Mayor that stipulation “e” is probably not necessary.

Mrs. Poole stated that this is probably the worst site relative to environmental issues. She added that she is surprised it was recommended for approval.

Sean Schwinghammer, Pinnacle Housing Group, stated that they are offering a density of almost 20% less than what is permitted. He discussed the setbacks, wall, large buffers and landscape buffers and stressed that they are not seeking any variances. He noted that this is a phased development.

Mayor Buckley asked if this is affordable housing. Mr. Schwinghammer said they have made Phase One affordable housing. Mayor Buckley asked why this was not revealed when the application was submitted. He added that the proposed plan notes that it is a “luxury residential community”, which hardly sounds like affordable housing. Mr. Schwinghammer replied that they made it clear to staff from the beginning that this was affordable housing. He added that the amenities are as luxurious as those offered anywhere else.

Alan Wolfe, Forum Architecture & Interior Design, Inc., distributed a site plan, which shows Phase One and Phase Two. He noted that the site will have more density to the south; only one-story units will be adjacent to Stewart Road. The site will be heavily landscaped along the sides and the location of the two- and three-story buildings will be placed to maintain a “small scale” appearance.

Continuing, Mr. Wolfe said the site plan appears to have the scale of a single-family development. Additionally, they have opted to provide the pond in an area that will be visible from Lake Washington and Stewart Roads. He stressed that they have done everything possible in order to be good neighbors.

Mr. Wolfe noted that multi-family tends to be transitional housing between single-family and commercial/industrial. He elaborated on the steps they have taken to keep the scale down and noted that all of these things contribute to a beautiful community.

Mr. Wolfe stressed that affordable housing can be just as beautiful as luxury housing. The materials and construction techniques are the same. The primary difference is the type of financing available to develop the project.

Wendy Swindell, Senior Ecologist, Biological Research Associates, Vero Beach, stated that her firm performed the wetland and gopher tortoise survey (copy distributed) and mapped the vegetative communities. She pointed out the wetland areas on the map and noted that they have not been reviewed by SJRWMD yet. She concluded by saying there is no reason to believe that the gopher tortoise and wetland issues won’t be resolved through the state and federal permitting process.

Mrs. Poole asked if they plan to mitigate. Ms. Swindell replied that, at this stage, they are not sure.

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Mr. Schwinghammer reported that Amy Wright, environmental consultant, performed the study on the scrub jays.

Amy Wright, Vanasse, Hangen, Brustlin, Inc., Orlando, environmental consulting firm, said they began an informal consultation process with the U. S. Fish and Wildlife Service over the period of a year. The Fish and Wildlife Service has designated this as a scrubby flatwoods area and without management, the site will continue to be overgrown and not suitable for scrub jay habitat. The U. S. Fish and Wildlife Service is adamant that on-site preservation is not what they are looking for. They are looking for off-site mitigation. She listed what some of the likely conditions of a permit would be.

Mr. Palmer asked if all recreational facilities outlined are planned for Phase One. Mr. Schwinghammer said yes, with the exception of one tot lot. Additionally, he elaborated on the setbacks in response to Mr. Palmer.

Mr. Palmer asked the anticipated completion dates. Mr. Schwinghammer said they have applied to the state for tax exempt bonds. If they receive this, Phase One would take 14 – 18 months.

In response to questions, Mr. Schwinghammer discussed the setbacks, location of the buildings, location of wall, landscaping, and size of the units. He noted that they have not yet established the size of the pool; however, it will be commensurate with the size of the community. It will be a minimum of 1,000 s.f. Also, they plan to provide a shallow child pool.

Mr. Schwinghammer agreed to provide additional amenities in Phase Two; however, he noted that they will not provide an additional clubhouse or pool. He added that they would prefer to wait until they know the needs of the community before listing specific amenities to be included with Phase Two.

There were no other comments from the public.

Mrs. Palmer stated that she sees a lot of problems with this plan – the wetlands, gopher tortoises, scrub jays, number of trips per day, the aquifer recharge area, and the location of the tot lot next to the cement operation. She stated that she can't support this project.

Mrs. Poole discussed her concerns with the size of the buildings, number of units, parking spaces, number of trips, etc. She said it almost sounds like a dormitory or place to house students. Additionally, she noted that she does not believe it is compatible with the surrounding area and she does not believe enough amenities are being provided.

Mrs. Poole added that the city does not know if the applicant will receive the number of permits required for this development. She listed the endangered species outlined in the EIA and said that the development will result in the destruction of the environment, is proposed to be affordable housing, and is not compatible with the surrounding area.

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Mrs. Hand stated that she has a problem with the density. She commented that although she can't remember the level of service on Stewart Road, that road is being used a lot because Croton Road and Wickham Road are full. She concluded by saying she disagrees with stipulation "e."

Mayor Buckley said he has several problems, including the issue that this was not presented as affordable housing. He said the write up is misleading. And, he does not think this is the proper development for this area.

Moved by C. Palmer/Poole to deny SP-2002-14/Prairie Trace Apartments. Motion carried unanimously.

Recessed: 9:09 P.M.  
Reconvened: 9:19 P.M.

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)

From the agenda report: Dr. Paul Durney and Suzanne Winston have asked to place an off-premise directional sign on the southwest corner of Hibiscus Boulevard and Apollo Boulevard. The property belongs to Dr. Herbert Allen. There is a building on the property that is Dr. Allen's medical office, along with a detached sign identifying the office. A second detached sign on the same premises would require a variance.

The applicant meets all the other requirements for an off-premise sign. The applicants are requesting a two-faced 12 square foot sign that provides direction to the doctor's location on Apollo Boulevard to the south. This is a new location for the doctor who believes that he needs the added identification for his patients to locate his office.

This office is located in a medical community and approval of this would set a difficult precedent.

Dr. Durney, applicant, discussed the difficulties his patients have in locating the office.

Mayor Buckley said that staff has recommended denial because of the precedent this would establish based on the number of doctors in the area. He thanked Dr. Durney for his application.

Moved by Poole/C. Palmer for denial.

Mrs. Poole said the ordinance was established in order to control the number of directional signs. Mrs. Hand asked if this site would qualify for a 30-day flashing sign. Mr. Hill said if located on his own property.

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

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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.

From the agenda report: HOME Program rental assistance is scheduled to end for the following persons with disabilities and/or who are elderly during the 2002 calendar year.

<u>TBRA Recipient</u>	<u>TBRA Expiration Date</u>
Barrett, Myrtle	7/31/02
Spiller, Glenda	8/31/02
Ferraro, James	9/30/02

As provided for in the TBRA policy, persons who are disabled or elderly, at Council's discretion, may be considered for a two-year extension of their TBRA subsidies, in one-year increments.

Staff is actively pursuing the transfer of its third year TBRA special needs clients to Section 8 assistance, which is a permanent source of housing subsidy. Although the Brevard County Family of Housing Authorities has been most helpful in this process, it is taking longer than expected. Staff is doubtful that the process will be complete by the end of Ms. Barrett's current lease, July 31, 2002, but is more hopeful that it will be complete prior to the end of the leases of Ms. Spiller and Mr. Ferraro.

Moved by Hand/E. Palmer for approval of continued assistance to the recipients named under this item in the event that permanently subsidized housing does not materialize for them prior to the expiration of their TBRA. Motion carried unanimously.

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

25. COUNCIL ACTION RE: A request for authorization to purchase property at the corner of Highland Avenue and Eau Gallie Boulevard.

Mr. Hill reviewed the agenda report. At its April 9 meeting, Council agreed to have an appraisal to determine the value of the .56-acre property at the northeast corner of Highland Avenue and Eau Gallie Boulevard. Staff contracted with Tuttle Armfield Wagner to perform the appraisal.

Identifying comparable sales was very difficult. Based on a number of land sales throughout the city, the appraiser concluded that the value is \$230,000. The asking price is \$265,000. Mr. Joseph Flammio, has indicated that he is willing to accept \$253,000. He paid \$213,000 for the land in 2000 in addition to the closing costs. The real estate agent has indicated that several viable buyers have indicated an interest in the property.

The purchase could be financed through a loan from the General Fund to the redevelopment district, to be paid back through the income from the tax increment

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financing district. The loan period would not exceed 10 years. The estimated debt service for 10 years (at an assumed rate of 5%) is \$32,765 per year. The acquisition of the property will consume a considerable amount of the tax district's increment in the next few years.

The Olde Eau Gallie Redevelopment Committee considered this at its June 13 meeting and unanimously recommended approval of the purchase at \$253,000. Should Council wish to pursue purchase of this property, the following actions should be taken by the CRA:

1. Recommend approval of purchase.
2. Agree to accept the deed to the property.
3. Authorize the City Manager to close on the property.
4. Approve a loan agreement with the city for a loan of the amount of purchase for a period of time not to exceed 10 years and an interest rate not to exceed 1% of the average monthly return on the city's Public Financial Management (PFM) managed investments.
5. Authorize the Mayor to sign the required documents.

Jack Lembeck, Executive Director, Brevard Museum of Art and Science, recommended that the city purchase the property. He noted that he has a vested interest in the area with the museum being located nearby. He added that the property will serve a multi purpose.

Rick Hester, 617 Eau Gallie Boulevard, stated that he is an Eau Gallie merchant and member of the CRA advisory committee. He spoke in support of the purchase and noted that while untimely, the purchase is essential to development of the area. It will provide a focal point for the redevelopment area.

Continuing, Mr. Hester referenced the conflict of interest (by CRA advisory member Jacie Stivers who has the property listing) and said that it was disclosed up front and voluntarily. The committee voted as a whole on this purchase.

Mr. Hester listed the areas of the redevelopment plan that support the position of purchasing the property. He noted that the property is going to sell and the city has an opportunity to own and have control of the property.

Mrs. Poole said that the conflict of interest does not look good and gives the wrong impression. She said she believes that person does not belong on the committee; however, she can always attend meetings and offer suggestions.

Mr. Palmer pointed out that the issue on the agenda is the purchase of the property.

Barbara Falasiri, 1667 Highland Avenue, said she has been a property owner in the area for 20 years. She pointed out that the portals to the city don't convey the pride that we have in the city. This purchase would allow, for a minimal amount of money, the opportunity to create an interesting portal. She asked Council to support the purchase.

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Council received correspondence prior to the meeting from the following in support of the purchase: Gene Davis, CRA advisory board member; and Rick and Nancy Dillen, 1403 Pineapple Avenue.

Gene Davis, 851 Peregrine Drive, member of the CRA advisory committee, stated that this purchase will be key to developing the area as a community gathering area. He noted that in the past, this property served as a gathering area. The property will help tie the museum, Civic Center, library/riverwalk, and north/south sides of Eau Gallie Boulevard together. It forms an integral part of the vision to act as a catalyst in redevelopment of the area. He stressed that the value of the property will far exceed the purchase price.

Ralph Sanders, 1418 Highland Avenue, noted that several weeks ago Council gave the Eau Gallie Merchants' Association \$5,000 for special events. He said he has received the consent of a majority of the merchants to offer back the \$5,000 in order to assist with this purchase.

Mr. Palmer said the merchants have a need for the \$5,000 and should keep it. Mrs. Hand agreed.

Moved by E. Palmer/Hand to approve the five actions listed in the agenda package.

Mayor Buckley said this is quite a bit of money and will eat up the tax increment financing for a while. He said as long as the members understand that, he does not have a problem. Mrs. Palmer agreed and said if the members return for additional money, she will not be as agreeable. She added that perhaps the listing agent (Jacie Stivers) would be willing to forfeit her return on the property and take it off the list price.

Mrs. Poole said the offer to return the \$5,000 would help reduce what the redevelopment area has to pay; the debt would end sooner.

The question was called. Motion carried unanimously.

*At this point, City Council reconvened.*

From the agenda report: When the City Council reconvenes, the following action would need to be taken if Council wishes to proceed with purchase of the property:

1. Agree to purchase the property in the name of the CRA and loan the purchase price from the General Fund to the CRA for a period not to exceed 10 years at an interest rate not to exceed 1% of the PFM managed investments.
2. Authorize the City Manager to sign the purchase and loan documents on behalf of the city.

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Moved by Walker/Hand for approval of items 1 and 2 outlined in the agenda package.  
Motion carried unanimously.

26. COUNCIL ACTION RE: A request by the Brevard Museum of Art and Science for funding in the amount of \$15,000.

From the agenda report: This is a request from the Brevard Museum of Art and Science for funding in the amount of \$15,000. The interim director said that they neglected to submit a request in a timely manner due to the reorganization of the museum and turnover of staff.

Jack Lembeck, Executive Director, Brevard Museum of Art and Science, discussed the dedicated staff of the museum. He noted that they slipped; however, under the conditions of the current grant, they have served over 500 Melbourne residents at no charge. He noted that the museum is going through an administrative restructuring and they intend to comply with all rules and regulations.

Mrs. Poole asked if the museum plans to stay in the Eau Gallie area. Mr. Lembeck said they have no plans to move. He added that he sees the museum as a link and focal point in the redevelopment area.

Jacie Stivers, 1120 E. Palmetto Avenue, Brevard Museum of Art and Science board member, discussed the efforts taken to reorganize at the museum. She noted that they have a huge commitment to stay in the Eau Gallie area and she believes that the museum is on the right road. There has been a tremendous amount of work from volunteers and staff.

Mayor Buckley (referencing the May 28 Council meeting) said that out of the \$60,000 available for grants, \$9,225 remains. He said that due to the circumstances, he is inclined to grant \$7,000 to the museum.

Mrs. Palmer said Council set rules and guidelines for applying for funding. Dedicated volunteers staff all the groups that received money. It is not fair to pick and choose various organizations that apply after the deadline.

Mayor Buckley said he views this differently and noted that we gave the museum money last year. Mrs. Palmer said that has nothing to do with the guidelines. Mayor Buckley said they lost their executive director; people make mistakes. Mrs. Palmer replied that every organization with a problem could approach Council with a similar story; she is trying to be fair.

Moved by Hand/E. Palmer to give the museum \$9,225.

Mr. Palmer said the motion is appropriate because the museum has had a serious setback. They have new management and part of the effort of Council as the Community Redevelopment Agency should be to ensure that the museum survives. The city is simply showing compassion.

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Mrs. Poole pointed out that a couple of other organizations missed the funding deadline; however, Council established rules.

Mrs. Hand said this is a specific incident. The museum is located in the redevelopment area and is vital. She added that Council needs to make an exception to the rule.

Mrs. Palmer said there is a perception in the community that this Council is prejudice towards certain organizations regarding grant funding, and this action will foster that perception. Council needs to stick to the parameters and guidelines.

The question was called.

Aye: E. Palmer, Walker, Hand and Buckley

Nay: Poole and C. Palmer

Motion carried.

27. COUNCIL ACTION RE: Board Appointments

a. Code Enforcement Board – four regular members and two alternate members.

Mayor Buckley called for nominations for Frank Brunn's seat:

Moved by C. Palmer/Walker to reappoint Frank Brunn. Motion carried unanimously.  
(October 15, 2002 – October 14, 2005)

Mayor Buckley called for nominations for Thomas Olexa's seat:

Mrs. Poole nominated John Fadden.

Moved by E. Palmer/C. Palmer to close the nominations. Motion carried unanimously.

Moved by E. Palmer/Poole to appoint John Fadden. Motion carried unanimously.  
(October 15, 2002 – October 14, 2005)

Mayor Buckley called for nominations for the "other term" (Joan Needelman's seat).

Mayor Buckley referenced the good attendance record of Thomas Olexa (present for 27 out of 30 meetings) and said he believes he has been a good member. He nominated Mr. Olexa. Mrs. Palmer nominated Lorna King.

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

Mrs. Palmer referenced the recent action taken by the Code Enforcement Board (on the city's request for a re-hearing in the matter of Florida Recyclers, Inc.). She said that the

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Code Enforcement Board minutes indicate that a couple of members stated that although they made a mistake, they were not going to rectify it. She added that Mr. Olexa was one of those members.

Mayor Buckley said he understands the position they took; however, Mr. Olexa has done a good job during his term on the board.

The roll call vote was:

Olexa: Poole and Buckley

King: E. Palmer, Walker, C. Palmer, and Hand

Appointed: Lorna King (June 28, 2002 – October 14, 2003, unexpired term)

Mayor Buckley called for nominations for alternate member Bobby Bowen's seat:

Moved by Walker/Hand to reappoint Bobby Bowen. Motion carried unanimously. (July 9, 2002 – July 8, 2005)

Mayor Buckley said Council needs to appoint one more alternate member (Joseph Conneen's seat).

Moved by Buckley/C. Palmer to appoint Melinda Flora. Motion carried. Mrs. Poole voted nay.

Mrs. Poole indicated that Council needs more applicants to review.

(Note: appointment of the fourth regular member will return on a future agenda.)

27.1 COUNCIL ACTION RE: Utilization of special legal counsel in the matter of Florida Recyclers, Inc. (Added to the agenda at the June 25, 2002 meeting)

Mayor Buckley reported that staff has recommended Council retain the services of Attorney C. Allen Watts of the firm Cobb Cole & Bell, Daytona Beach, Florida.

Mrs. Poole agreed that Attorney Watts has a tremendous background; however, she said we have two attorneys on staff that could easily handle this. Mrs. Palmer said we need someone to handle this case aggressively and the City Attorney is so successful working for the city because he is able to bring parties together for compromise. If he handled this aggressively, it would compromise his ability to work with parties in the future.

Attorney Gougelman recommended Council make a special appropriation to hire Attorney Watts. He elaborated on the situation and noted that he used to practice with Allen Watts and believes he is outstanding.

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Moved by Buckley/Hand to hire Attorney C. Allen Watts with the firm of Cobb Cole & Bell with an estimated cost of \$10,000 - \$20,000. Motion carried unanimously.

28. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Attorney Gougelman reported that John Burr with Meg O'Malleys has not paid the city for police service and additional city services as a result of the St. Patrick's Day street party. At the request of the City Clerk, a demand letter was sent. Mr. Burr has not responded; therefore, he is requesting Council authorization to file a lawsuit against Mr. Burr.

Moved by Poole/Walker to authorize staff to file a lawsuit (as outlined by Attorney Gougelman). Motion carried unanimously.

Attorney Gougelman reported that he would like to take vacation from July 15 through July 19.

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

Mr. Palmer reported that the use of scaffolding will only be required for half the windows that need to be replaced at Ramshur Towers. The Housing Authority is in the process of locating a commercial window that will work at levels over five stories. Mr. Palmer said he should have an update within 10 days.

Mrs. Hand stated that Council receives so much reading material that she would like to consider a monthly meeting to have staff review the material. Mrs. Poole said she does not need another meeting. Mrs. Palmer recommended that some of the items be scanned and e-mailed. Mr. Hill said staff is working on establishing the ability for the members who have computer access to log into the network where an electronic version of the documents could be viewed.

Continuing, Mr. Hill said he would be glad to provide a forum or meet individually with members.

Mrs. Poole noted that the city is getting too many development projects. She said there is no big urgency to have these approved; therefore, she recommended that the Planning and Zoning Board and Council consider a maximum of four items at one time. Mrs. Hand and Mrs. Walker agreed. Mrs. Palmer asked the implications.

Attorney Gougelman said that action could lead to a backup of applications, which could result in a de facto moratorium on development. Moratoria are generally found to be acceptable by the Supreme Court so long as they are reasonable. It is not clear if the argument that there is not enough time to review the applications would be considered reasonable. The other issue relates to business and what effect this action would have on business in Melbourne.

Mrs. Palmer asked about conducting more than two meetings per month. Mayor Buckley said it is difficult now trying to schedule special meetings with Council. Mr. Hill offered

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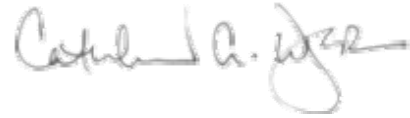
two suggestions: separating the business items from the development items and starting the meetings at 6:30 p.m. to act on purchasing/business items.

Regarding the limit to four development items, Mr. Palmer said we need to stay away from quotas; that leads to nothing but trouble.

29. ADJOURNMENT

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

The meeting adjourned at 10:39 p.m.



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City Clerk – 7/8/2002

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