

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 23, 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 Vice Mayor Loretta Hand.

1. Pastor Mark Balmer, Calvary Chapel, gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

Present:	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
	Cathy Baker	Assistant City Clerk
	Bud Emerson	Assistant City Manager
	Peggy Braz	Planning and Economic Development Director

Absent:	John A. Buckley	Mayor (out of town)
	Cathleen A. Wysor, CMC	City Clerk (vacation)

4. PROCLAMATIONS AND PRESENTATIONS

Mrs. Hand presented a proclamation recognizing the retirement of Assistant City Manager Bud Emerson from the City of Melbourne on August 2, 2002.

5. APPROVAL OF MINUTES – Recessed Regular Meeting - June 28, 2002
Special Meeting – July 2, 2002
Regular Meeting – July 9, 2002

Moved by Walker/E. Palmer for approval of the June 28 Regular Meeting minutes, the July 2, 2002 Special Meeting minutes, and the July 9, 2002 Regular Meeting minutes.

Mrs. Poole referenced the July 9 minutes, Item #19. The motion states that the SHIP rental rehabilitation funds are for property in Tucker Heights; however, at the meeting it was determined that Mitchell and Hickory Streets are not in Tucker Heights. She asked that the motion be revised as follows: “Moved by Hand/E. Palmer for approval of the award of \$69,740 in SHIP Rental Rehabilitation Program funds to be made to the Melbourne Housing Authority for the rehabilitation of rental property known as Tucker Heights and for rental property on Mitchell and Hickory Streets (PHA Project N FL56-5) for roof replacement.”

The maker/seconded accepted the revision. The question was called on the motion as revised. Motion carried unanimously.

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6. CITY MANAGER'S REPORT

Mr. Hill reminded Council that the retirement ceremony for Bud Emerson will be held on Friday, July 26, 11:30 a.m. at Front Street Civic Center.

He also reported that the County Commission, in a 3-2 vote, abandoned its effort to adopt an ordinance that would allow the creation of a water and sewer district covering the unincorporated areas of the county. The Brevard County Water Supply Board will meet on August 23 and discussion will continue regarding water supply issues.

Mrs. Hand referenced the City Manager's memo requesting the addition of Resolution No. 1771 to the agenda as item 22.1 and Resolution No. 1772 as item 22.2; however, she noted a request from Honor America to hear Resolution No. 1771 under the Consent Agenda. She asked that it be added as item 16f.

Moved by Contreras/E. Palmer to add Resolution No. 1771 to the agenda as item 16f. Motion carried. (Council Member Poole voted nay.)

Moved by Poole/Walker to add Resolution No. 1772 to the agenda as item 22.1. Motion carried unanimously.

7. PUBLIC COMMENTS

Mrs. Hand read a letter from James Johnson, Melbourne Airport Director, explaining why he did not apply to the Federal Aviation Administration for a Small Community Air Service Development Pilot Program grant. His letter was in answer to correspondence from a citizen referring to a *Florida Today* newspaper article about Daytona Beach receiving the grant that asked why the Melbourne Airport did not apply. The letter further stated that the Airport Authority intends to submit a grant application in 2003 to increase air service to the community and solicits the City's participation in a public-private partnership effort and financial support (approximately \$165,000) for the local (non-airport) share of the grant.

UNFINISHED BUSINESS

8. ORDINANCE NOS. 2002-48, 2002-49, AND 2002-50 (AR-2002-139/CPA-2002-05/Z-2002-927): (Public Hearings/Second 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) (First Readings 6/28/02)

- a. Ordinance No. 2002-48: An ordinance providing for the annexation of the property (AR-2002-139).

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- 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)

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

Moved by Poole/C. Palmer for approval of Ordinance No. 2002-48. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2002-49. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by E. Palmer/Walker for approval of Ordinance No. 2002-50. The roll call vote was:

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

Nay: None

Motion carried unanimously.

- 9. ORDINANCE NO. 2002-51 (Z-2002-929/MERRILL LYNCH PROPERTY): (Public Hearing/ Second Reading) An ordinance to change 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) (First Reading 6/28/02)

Attorney Gougelman read Ordinance No. 2002-51 by title. There were no comments from the public.

Mr. Palmer asked about the density and whether this development would be required to provide additional open space as previously discussed by Council. Mrs. Braz stated the density will remain six units per acre. At its July 18 meeting, the Planning and Zoning Board postponed action on the ordinance requiring additional open space in R-1B zoning

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and requested staff investigate some other issues. That ordinance should come to Council on August 27; however, the open space issue isn't a zoning matter. If Council adopts the R-1B ordinance it should be in effect prior to the platting of this property.

Responding to Mrs. Poole, Mrs. Braz stated there is a wetland on the property; however, she is not sure of the location. An environmental impact assessment is not required at the time of zoning. Mrs. Poole advised that an assessment had already been done that shows one scrub jay family and some other issues. If there is a wetland she is concerned that they will mitigate.

Mrs. Braz responded that the scrub jays and wetland are two different issues. The applicant must apply to the St. Johns River Water Management District for mitigation of both. She confirmed that the issue would return to Council for platting.

Moved by E. Palmer/C. Palmer for approval of Ordinance No. 2002-51.

Mrs. Poole stated that she would support this because it only allows 65 units where the current zoning allows 90 units.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2002-52: (Public Hearing/Second Reading) An ordinance amending Chapter 20, "Offenses," by establishing noise and vibration standards. (First Reading 7/02/02)

Assistant City Attorney Novak read Ordinance No. 2002-52 by title. She stated that Council received the expert testimony of sound engineer Joseph Tessitore, the City's consultant, at the July 2 meeting. Mr. Tessitore also provided practical demonstrations of various sounds and frequencies, enabling Council to experience a range of sounds and how they will be measured.

At that meeting, Council requested several changes to Section 20-30 (exemptions). The changes have been included in the ordinance as follows:

- Exempt athletic practices and marching band practices.
- Operation or amplification of sound produced by a radio, tape player, or other mechanical sound making device or instrument within a motor vehicle on a street or highway as prohibited by section 316.3045, Florida Statutes, and further defined in Rule 15B-13.001, Florida Administrative Code. Nothing in this ordinance shall be construed as limiting or curtailing the authority of Law Enforcement Officers to enforce

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section 316.3045, Florida Statute, under the “plainly audible” standard as identified and defined therein. However, this ordinance shall apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use bound making devices.

- Exempt emergency generators during a power outage caused by a natural disaster.
- Emphasize that the ordinance does not prohibit a Law Enforcement Officer from enforcing Section 316.3045, Florida Statutes, as it relates to sound produced within a motor vehicle.

Ms. Novak stated that the wording regarding boom boxes in cars is required because Chapter 316, Florida Statutes, governs radios within cars that are traveling on streets and highways. The ordinance emphasizes the fact that Florida Statutes govern radios, tape players and stereos within motor vehicles and that nothing in our ordinance is going to curtail or in any way limit Police Officers from enforcing state law. That Statute, 316.3045, however, does not regulate sound trucks or motor vehicles that have sound amplification equipment for business purposes, such as ice cream trucks. Sound trucks and ice cream trucks would be governed by our ordinance.

The costs associated with implementing the ordinance include \$14,000 for training (based on training for 20 individuals, including manuals), and \$6,000 for equipment (two sets of equipment, one each for the Police Department and Code Compliance).

Vice Mayor Hand opened the public hearing.

Jack Waelti, Coral Bay Restaurant, discussed his outdoor cabana operation, noting he no longer offers live bands because they don’t honor requests for volume control. He has a DJ on Friday and Saturday nights. He utilizes sound monitoring devices and noted that the wind can change the readings. He discussed the negative impact the ordinance may have on his business and his employees.

Collete Alexander-Vrana, 808 Hickory Street, stated she appreciates Mr. Waelti’s concerns. She does not complain about noise on weekends and holidays; however, during the week she needs to rest. With her windows closed, air conditioner running and fan and radio on, she still hears the noise from his establishment until 1 or 2 a.m. She asked about hardship variances and if a multi-million dollar operation concerned about losing money is considered a hardship. She questioned the time needed for training, the number of employees to be trained, and whether someone would be on duty every night of the week.

Kevin Aplin, 2613 Larry Court, discussed concerns regarding enforcement. He has had practical experience hosting functions in the City – primarily at the Green House Café in Downtown Melbourne. During encounters with Police Officers regarding noise complaints he requested a sound measurement so that he could comply; however, none was ever done. He asked that the ordinance provide a warning prior to issuing a violation or arrest. Mr. Aplin asked about the fee for applying for a variance.

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Mrs. Braz reported that the fee for a variance is \$165.00.

Mr. Hill discussed the purpose of this ordinance and asked Ms. Novak to respond to the issue of the Officer's discretion for issuing a warning.

Ms. Novak stated that Section 32(b)(2) provides that a violation exists if the Officer can feel a vibration beyond the property line. Mr. Aplin responded that if there is a violation, the person should be allowed to turn down the sound.

Mr. Gougelman stated that no individual has a right to create a nuisance for his neighbors. Police Officers try to work with citizens who may be violating a local law while attempting to ensure that reasonable community standards are met. They must use a certain amount of discretion to determine the best means to secure compliance while not harassing individual citizens. Mr. Gougelman agreed that in some cases a warning might be appropriate; however, a commercial establishment that is a perennial violator, that uses a different band each night, may receive noise complaints once or twice a week. He asked how many warnings should be issued and noted that Council cannot legislate reasonability.

Mr. Aplin said this ordinance provides no language that gives a person the opportunity to comply.

Mr. Gougelman stated that Mr. Aplin's comments are worthy of discussion by Council. Ms. Novak added that any noise measurement taken by a Code or Police Officer must be taken for 10 minutes.

Mr. Hill stated this ordinance is intended to be administered by Police and Code Officers. Code Officers do not have arresting authority; they issue citations only if the sound is not adjusted after first requesting compliance. A Notice to Appear and arrest powers should only be used as a last resort.

David Bitner, 172 Virginia Road, West Melbourne, stated that he is concerned that an Officer can come in without a warning and make an arrest or issue a citation. He stated that he brings his drum to Friday Fest. The decibel level of the drum is very low. He does not want to become part of the problem; but a situation where an Officer can shut you down and issue a citation is unreasonable. Mr. Bitner asked that the ordinance be revised to allow for a warning.

Anthony Darmana, 2710 Palm Street, Palm Bay, stated that enforcement should allow some tolerance. He added that a lot of establishments have not survived because of something this ordinance will allow - freedom of Police Officers to use their discretion. Mr. Darmana stated the ordinance is vague and he would like to see it rewritten.

Mrs. Hand referenced emails in opposition received from Laura Pinfield, Brett Cloud, Tom W. Gilliam, OakFeathers@cs.com, Elder Dragonkin, Justin Matthews, Lisa Meyers, Jesse Rogers, David Bitner, Raya Campbell, Clint & Sharee, Susan Arran, L. Bird, Kimberli White Otter, Fred Leavitt, Lady Amalthea, Cephlian Limoges, and "Doc", and a letter in opposition from Kevin Aplin.

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Council Member Cheryl Palmer stated that she was confused by the sound demonstration. She is not sure how the noises Council heard in the Council Chamber would apply at her home. She has been told that children playing Marco Polo in a pool would be in violation of this noise ordinance and that a group of church friends talking around a pool in the evening could possibly violate the noise ordinance and the current decibel level. She asked for clarification of the current ordinance and the decibel levels at the property line.

Ms. Novak read from the current noise ordinance, Chapter 20 and Appendix B, Article XVIII, Environmental Standards. It provides that from 7 a.m. – 10 p.m., 60 decibels are permitted in a residential, professional or institutional zoning district, and 65 decibels in a commercial district. From 10 p.m. to 7 a.m., 55 decibels are permitted in a residential, professional or institutional zoning district, and 60 decibels in a commercial district.

She pointed out that the proposed ordinance adds measurement for frequency. The Officer will take a noise measurement at a frequency level and use the corresponding decibel reading as set forth in the table in section 20-27.

Mr. Hill stated that this issue is confusing and complicated. That is why a sound engineer was used and why it took so long to return to Council. The decibel readings are an aggregate of a variation of sounds. Unfortunately there is no easy way to completely demonstrate all of the sounds. The July 2 presentation included both inside and outside frequencies. Another demonstration for outside music could be presented.

Continuing, Mr. Hill stated this ordinance establishes a stricter standard. This comes into effect with things like air conditioning units that, as currently measured, meet the standard. However, under the new ordinance the high frequency would trip the measurement.

Mr. Hill referenced the sanctioned events held outside, activities that create intermittent noise from people enjoying music in a home, and the concerns of business operators. Where Council draws the line will be the difficult measure.

Mrs. Palmer stated she would be more comfortable with a more realistic demonstration. She has concerns about “turning off the music in Melbourne.” We need to allow clean, legal fun for socializing while remembering that other people work and need their rest.

Mr. Hill commented that “turning off the music” is not the intent of this ordinance. He stated that an additional demonstration can be arranged if Council feels it would be beneficial.

Mrs. Palmer expressed concern that the ordinance, as currently written, does not induce the Officer to issue a warning – it is the Officer’s discretion.

Mr. Hill stated there is a real benefit with this ordinance. Violators will be instructed on what needs to be turned down to allow them to continue and be in compliance.

Mr. Palmer stated he does not have any problems with the decibel limits in the ordinance. He favors amending the second reading to allow for issuing a warning and time to comply.

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Enforcement, if necessary, could be done after issuance of the warning. This would balance the rights of all the citizens.

Ms. Novak suggested revised enforcement wording for section 20-32 (b)(1), (2) and (3).

Mr. Palmer agreed; however, he recommended using the word “warning”. He asked if an additional hearing would be required. Mr. Gougelman confirmed that the change can be made and adopted this evening without another hearing.

Mrs. Palmer asked if the FridayFest is in violation of the noise ordinance. Mr. Hill stated that depending on the time and location of the sound, FridayFest probably exceeds the current levels. This is one of those instances where we would have to establish a variance procedure. We would need to determine some reasonable boundaries for the event area. Mr. Hill stated staff could arrange to have one of the new meters to use at the next FridayFest to provide a measurement and a real world practicality of the enforcement.

Mrs. Poole stated that FridayFest ends at 9 p.m. Problems occur when outdoor bands play until 2 a.m. She can verify that it is hard to block out the noise.

Mrs. Hand stated she felt that a warning should be given and she agrees with the amendment.

Mr. Gougelman asked Ms. Novak to read the amended language for the record. Ms. Novak read the amended section 20-32(b)(1), (2) and (3) as follows:

(b) (1) If a Police Officer or any other authorized Code Enforcement Officer encounters a circumstance which reasonably indicates that a person is violating section 20-29(a), the Officer shall measure the sound pressure level with a sound level meter to determine if the sound pressure level exceeds the level permitted under section 20-27. If the results of the test indicate that a violation of section 20-29(a) is occurring or has occurred in the presence of such an Officer, the Officer is thereupon authorized to issue a warning directing the person producing the sound to come into compliance with the sound pressure levels permitted under section 20-27. Failing immediate compliance the Officer is authorized to issue a Notice to Appear to, or arrest, the person producing, causing to be produced, or allowing to be produced, the sound.

(2) If a Police Officer or any other authorized Code Enforcement Officer encounters a circumstance which reasonably indicates that a person is violating section 20-29(b), the Officer shall determine if the vibration is discernible at or beyond the property line from which the vibration is emanating. If the Officer determines that a violation of section 20-29(b) is occurring or has occurred in the presence of the Officer, the Officer is thereupon authorized to issue a warning directing the person producing the vibration to come into compliance with section 20-29(b). Failing immediate compliance, the Officer is thereupon authorized to issue a Notice to Appear to, or arrest, the person producing, causing to be produced, or allowing to be produced, the vibration.

(3) If a Police Officer or any other authorized Code Enforcement Officer

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encounters a circumstance which reasonably indicates that a person is violating section 20-29(a), (b) or (c) and that Officer is unable to measure the sound or vibration in accordance with 20-28, then that Officer shall determine whether the sound or vibration being produced is of sufficient volume level, duration and character so as to annoy, disturb, injure or endanger the comfort, health, peace or safety of reasonable persons of ordinary sensibilities. If the Officer determines that a violation of section 20-29 is occurring or has occurred in the presence of the Officer, the Officer is thereupon authorized to issue a warning directing the person producing the sound or vibration to reduce the volume level, duration, and character of the sound and/or vibration to comply with section 20-29. Failing immediate compliance, the Officer is thereupon authorized to issue a Notice to Appear to, or arrest, the person producing, causing to be produced, or allowing to be produced, the sound or vibration.

Mrs. Walker asked if the arrest warrant would be issued the same night as the warning. Ms. Novak stated that failing immediate compliance, the Officer could issue a Notice to Appear or make an arrest. Mrs. Walker said she prefers a period of time to comply. The person causing the loud decibel sound, after thinking about it overnight, might decide to turn down the sound.

Mrs. Poole stated the line has to be drawn somewhere. The Officer can't keep asking the violator to turn down the sound.

Mrs. Palmer referenced the commercial enterprise whose air conditioner or other equipment is in violation of the ordinance. After the warning is issued, compliance would involve retrofitting or other adjustments. She asked how this would be handled.

Ms. Novak stated that upon a violation of the ordinance taking place and the Officer issuing a citation or a Notice to Appear, under Florida Statute, Chapter 162, the person violating the ordinance can bring the problem into compliance in the normal code enforcement procedure by correcting the violation and demonstrating it has been corrected. In this case the correction would most likely occur by applying for a variance. The demonstration of compliance would be the variance application procedure.

Mrs. Poole asked whether a restaurant that has a loud outdoor band that is disturbing could get a variance for a year and the police not be able to stop the noise. Mr. Gougelman stated that would depend on the standards in the variance issued.

Mr. Palmer stated that common sense must prevail. A commercial establishment will need time to comply, but a band can immediately comply by turning down the sound. Police and Code Officers must make decisions based on the facts at the time. An ordinance can't be written to address every situation that may arise.

Moved by E. Palmer/Poole to amend the ordinance to include the revisions as noted (relating to issuance of a warning).

Mrs. Palmer referenced section 20-35 that provides immunity from prosecution for reasonable, good faith trespass in the discharge of duties under this article. She asked

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whether Officers had the authority to enter a premise without permission if the objectionable noise can be heard outside, and the Officer knocks on the door of a private residence and no one responds.

Ms. Novak responded this is a statement of doctrine. Officers have probable cause to arrest in criminal instances. This is a civil ordinance and she does not think that a Law Enforcement Officer would have probable cause to break down a door to enter a noisy party.

Mr. Gougelman commented that if it would help Council move forward in a united fashion, that section can be removed without any damage to the ordinance.

Mrs. Poole countered that if the people don't answer the door they can keep the noise going all night long. She questioned how a warning is issued and the noise stopped if they don't answer the door. Ms. Novak responded that other statutes come into play under disturbing the peace or creating a nuisance that could rise to the level of enforcement by Police Officers. This ordinance does not allow an Officer to break down a door for enforcement.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Staff recommended that section 20-30(7) be amended to include reference to Florida Statute 403.415 and a revision to section 20-30(15) to include the sentence "However, this ordinance shall apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use sound making devices." Staff also recommended deleting section 20-30(16) because it duplicates Section 20-30(7).

Moved by C. Palmer/Walker to amend the ordinance as requested and delete Section 20-35.

Mr. Gougelman stated that removal of section 20-35 is a policy decision for Council. The statement repeats existing state law. Deleting the language does not undermine the ordinance.

Mr. Palmer asked if the Officer could be held liable for any trespass that he makes in the enforcement of the ordinance if this language is removed. Mr. Gougelman and Ms. Novak responded no.

Mrs. Palmer stated removing the language would make the citizenry more comfortable.

Mrs. Poole said she has a problem with removing the language. Providing the language in the Code will help our employees do their duty.

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

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

Nay: Poole

Motion carried.

Moved by Poole/Walker to approve Ordinance No. 2002-52 as revised. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Recessed: 9:31 p.m.

Reconvened: 9:41 p.m.

11. ORDINANCE NOS. 2002-53 AND 2002-54 (Z-2002-928/CU-2002-07/SP-2002-13/CONVENIENCE STORE): (Public Hearings/Second Readings) Ordinances to rezone the .432-acre westerly portion of the property and establish a conditional use for an automobile service station on the total 1.2-acre parcel located at the southwest corner of Post Road and U.S. 1. (Owner/Applicant – PostUS1 L.L.C., c/o Corporate Property Group, Inc.) (Representative – Gary B. Frese) (First Reading 7/09/02)

a. Ordinance No. 2002-53: An ordinance to rezone property from C-1 (Neighborhood Commercial) to C-P (Commercial Parkway) (Z-2002-928)

b. Ordinance No. 2002-54: An ordinance granting a conditional use for an automotive service station (CU-2002-07).

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

Moved by Poole/C. Palmer for approval of Ordinance No. 2002-53. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2002-54. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Lipscomb Park Walkway, Lighting around the Lakes, and Restrooms (south end of the park)
- a. Approval of budget restructuring to provide funding in the amount of \$122,760 (including contingency) to complete the Lipscomb Park Walkway, Lighting around the Lakes, and Restrooms project.
 - b. Approval of bid award of Lipscomb Park Restrooms, Project CD9803, Certified General Contractors, Melbourne, FL - \$72,983.
 - c. Approval of Bid Award for Lipscomb Park Lighting Improvements, Project CD9803, East Coast Power, Inc. Scottsmoor, FL - \$48,019.

From the agenda report: The Lipscomb Park Improvement Project has been underway since 1997. Although several elements were completed in earlier years, the following elements remain to be completed:

1. Awarded on June 25 is the concrete sidewalk around the two lakes with connections between community center, playground, and picnic areas, all with handicapped accessibility;
2. For contract approval on this agenda is the installation of lighting along the above sidewalk; and
3. For contract approval on this agenda is the construction of a restroom building at the south end of the park to serve the ballfield area.

In 1997, the estimate for restrooms was \$30,000 and the estimated cost for the sidewalk was \$20,000. The remaining budget for the Lipscomb Park Improvements Project is only \$51,629. The total cost of the above projects totals \$174,389 including a 10% construction contingency budget of \$10,350. The unfunded difference is \$122,760, or \$112,410 without the contingency.

Staff believes it would be beneficial to proceed with the project as South Melbourne residents and the Lipscomb Park Association have been waiting for more than five years for implementation.

The following budget transfers could fund the Lipscomb Park Walkway, Lighting and Restroom Building shortfall:

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	Amount
1. Recapture savings from Grant Street Community Center HVAC Project.	\$4,025
2. Use Program Income received from the sale of a privately owned property assisted with federal Rental Rehabilitation Program funds	\$2,600
3. Transfer all but \$1,000 of the \$35,000 in CDBG funds currently budgeted for the restroom building for the north ballfields at Lipscomb Park. (This way at least one restroom building can be built at Lipscomb Park.)	\$34,000
4. Recapture savings from the Carver Park Master Site Plan project.	\$1,200
5. Transfer funds from Booker T. Washington Neighborhood Revitalization Project 2001-2002. (Any savings from CDBG street paving projects currently underway and any unused contingency or other savings from the Lipscomb walkway, restrooms and lighting will be returned to the BTW Revitalization Project. In addition, at the end of this fiscal year, any other savings will be swept into the BTW account in order to restore as much of this \$80,935 proposed reduction.)	\$80,935
TOTAL	\$122,760

Moved by E. Palmer/Walker for approval of the proposed adjustments to provide full funding for the Lipscomb Park Walkway, Lighting and Restroom Building Project. Motion carried unanimously.

Lipscomb Park Restrooms

This is a proposed construction contract award for a new restroom building in Lipscomb Park. The project involves demolishing an existing restroom and constructing a new 470-square foot concrete block restroom building that will be furnished with handicap-accessible equipment. Lighting and ventilation systems are also provided. This is a Community Development Block Grant funded project.

Bids for the project were opened on June 27, 2002. Four bids were received ranging from \$62,700 to \$95,000. The low bidder was L.A. Construction Services, Inc. This firm subsequently submitted a request to withdraw its bid claiming that an error of \$22,000 was made in preparing the bid. Staff believes that information provided by the bidder confirms that an error was made. The intended bid amount would have been \$84,700. The bidder confirmed that he could not construct the project for the original bid amount.

In a case such as this, the decision to award a contract should be in the best interest of the City. Attempting to force the bidder into a contract would likely result in a legal challenge and expecting a good product if successful would be optimistic. Based on the range of bids received, staff does not think that re-bidding the project would result in a better price. Therefore, staff recommended that the contract be awarded to the second low bidder, Certified General Contractors, Inc. in the amount of \$72,983. Certified General, located in Melbourne, has satisfactorily constructed two projects for the City in recent years. The contractor has 120 calendar days to complete the project.

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Moved by Contreras/C. Palmer to award the construction contract to Certified General Contractors, Inc. for the amount of \$72,983. Motion carried unanimously.

Lipscomb Park Lighting Improvements

This is a proposed contract for installation of 24 pole-mounted lights around the perimeter of the lakes in Lipscomb Park. The work includes modifications to the existing electric switch gear to accommodate the new circuits. The lighting will illuminate the new concrete sidewalk to be constructed around the lakes. Council approved the sidewalk contract on June 25. This is a Community Development Block Grant funded project.

Bids for this project were opened on June 27, 2002. Three bids were received ranging from \$48,019 to \$76,200. The low bidder is East Coast Power, Inc., located in Scottsmeer, Florida. The contractor has 120 calendar days to complete the work or liquidated damages of \$200 per day will be assessed.

Moved by E. Palmer/Contreras for approval of the contract with East Coast Power, Inc. in the amount of \$48,019. Motion carried unanimously.

13. COUNCIL ACTION RE: Award of contract for Baffle Boxes at Young Street and Stewart Avenue, Project 02904, Jobear/Warden Construction, Palm Bay, FL - \$120,478.

From the agenda report: This is a proposed contract for construction of two stormwater baffle boxes with associated drainage pipe replacement. The work includes constructing baffle boxes at two sites. One site is on the Eau Gallie River at the Eau Gallie Yacht Basin. The project involves new storm inlets and drainage piping on Young Street as well as a new storm drain to convey the stormwater down the driveway, in a public drainage easement, to the new baffle box that will be constructed near the point of discharge into the river. The other site is on a ditch that runs from Eau Gallie Boulevard, near Stewart Avenue, southward to discharge into the Eau Gallie River.

The baffle boxes will capture contaminants from drainage areas that now discharge directly into the river. These are at locations where significant reduction of pollutants can be realized. After construction, the boxes will be pumped out on a regular basis. Improving the quality of our surface waters is one of the goals of the stormwater utility. This project was designed by Brevard County Surface Water staff.

Bids for the project were opened on June 20, 2002. Two bids were received, one at \$120,478.00, the other at \$120,827.04. The low bidder is Jobear/Warden Construction, located in Palm Bay.

The City received a \$40,000 grant from the St. Johns River Water Management District and committed another \$35,000 in funding. The project costs are higher than estimated because existing corrugated drainage piping in these areas was found to be deteriorated and in need of replacement. Additional funding will have to be transferred to this project.

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Moved by E. Palmer/C. Palmer for approval of the contract with Jobear/Warden Construction in the amount \$120,478. Motion carried unanimously.

Moved by Contreras/E. Palmer for approval of the transfer of \$50,000 from Stormwater Utility Retained Earnings to this project.

Mrs. Poole asked what the NDP Park project is. Howard Ralls, City Engineer, explained that NDP (Neighborhood Development Program) preceded CDBG. Mr. Hill added that this property is off of Spain Street. Some drainage work is needed; however, he believes it can be accomplished with the amount of money budgeted.

The question was called. Motion carried unanimously.

14. COUNCIL ACTION RE: Amendment No. 3 to Task Order 2 for Services During Construction, Lake Washington Surface Water Treatment Plant Improvements, Project C97371, CH2M Hill, Orlando, FL - \$71,000.

From the agenda report: This is a proposal to extend CH2M Hill's contract time on the Phase 1 Surface Water Treatment Plant Improvement Project to coincide with the estimated date for construction completion. CH2M Hill is providing contract administration and on-site, project management services.

The contractor for the project, Poole and Kent Company (P&K), has not completed all of the work on the project. The contractual date for completion is May 16, 2002 and P&K's estimated date for completion is now September 24, 2002. CH2M Hill is contracted to provide standard construction contract administration and a full-time construction manager through July 15. Their time must be extended to coincide with completion of the work. In the previous 60-day extension, fees had been pro-rated from the original contract and were equated to \$1,122 per day. In this case, the fees have been reduced to \$1,000 per day to match the \$1,000 per day liquidated damage amount. The cost of this 71-day contract extension is \$71,000.

Since P&K has not completed all the work yet, the firm is subject to liquidated damages of \$1,000 per day for every day the project remains uncompleted. P&K's last approved date for completion is May 16, 2002. P&K submitted claims for additional time totaling 143 days. After reviewing all the facts related to each claim, the consultants have determined that some are acceptable and some are not. After all the claims are reviewed, staff will process a change order to adjust the time for contract completion and any days after that date will be at the \$1,000 per day rate. Liquidated damages can be used to pay for CH2M Hill's additional time on the job. The difference between CH2M's costs and the total amount of liquidated damages, if any, will have to be paid from the project budget balance.

Responding to Mrs. Walker, Mr. Hill explained that there is a provision in our contract with P&K that, if they were late, the City would be due \$1,000 a day for every day late.

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Mrs. Palmer referenced P&K's claim submitted for additional time totaling 143 days. Mr. Ralls explained that P&K will probably be able to justify 100 days; however, the City will need to review their critical path chart to see how this delay impacts the entire project.

Mrs. Poole asked if the contingency would take care of anything else. Mr. Ralls stated the contingency started at 5%. A lot of money was used for change orders (five so far) and this is the second extension. Prior to this, there was \$245,000 in contingency, basically the balance of the project budget. Subtracting this \$71,000 leaves \$170,000. We are getting close to using up all money; however, we are also close to finishing.

Mr. Palmer stated the liquidated damages are to be paid to the City. He asked how CH2M Hill is eating up that money. Mr. Ralls explained that CH2M Hill charged a set amount to provide the related services. Their cost has actually been reduced to equal the liquidated damages the City can collect. He explained that we don't actually collect from the contractor, we withhold money that would otherwise be paid to them. \$1 million would normally be paid to the contractor; however, we will subtract liquidated damages from that and pay them the balance. He confirmed that a change order will be needed to finalize the project. Some additional cost items remain and are being formulated for the next change order. These items will be reviewed by the Utilities Administration staff, the contractor and the consultant to determine the cost and the importance of the items with relationship to the remaining funding.

Mr. Ralls reported that CH2M Hill's fee was established at \$1,122 per day for their services during construction. This covers everything they do following award of the project, plus they provide a full time manager on the job. This is the second time their services have been extended and we negotiated their fee down to \$1,000 a day.

Moved by Poole/Walker for approval of Amendment No. 3 to Task Order No. 2 to CH2M Hill's contract to extend the date of providing services during construction to September 24, 2002 at an amount not to exceed \$71,000. Motion carried unanimously.

15. COUNCIL ACTION RE: Grant agreement with the Florida Department of Environmental Protection for construction of Dove Street stormwater treatment pond.

From the agenda report: This is a proposal to execute a grant agreement with FDEP that will provide grant funding for the Dove Street Stormwater Treatment Pond.

FDEP will provide \$102,000 in grant funds for the project that has a total estimated cost of \$208,000. The City's share is \$106,000. That share includes some of the money already spent to acquire the property for the pond. The City also has contracted for the engineering design out of a \$50,000 capital budget.

The balance of the City's share should be budgeted now. After subtracting the \$13,344.68 property cost and the already-approved budget, the balance is \$42,655.32. This money is available from the Wickham Park Treatment Pond Project. The County won't initiate construction of that project until after hurricane season ends. The funds are

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not needed for that project now and can be restored from FY 2002/2003 revenues. The proposed Stormwater Utility budget for FY 2002/2003 has a reserve for future projects.

Brevard County's Stormwater Utility staff prepared the grant application for the City. As part of that effort, they calculated that pollutant loading from the drainage area tributary to this pond would be reduced by about 50%. This means that the pond will annually capture about 29,000 pounds of suspended solid material that will not go into the lagoon.

The schedule in the agreement calls for the design to begin in July and the construction to commence in December 2002. Interestingly, the design has already been completed and permits have been approved. The project will be advertised before the end of the month. Construction will also begin several months ahead of schedule.

This is an excellent project to improve water quality. Water quality and flood control are the two objectives of the stormwater utility.

Moved by Poole/C. Palmer to authorize the transfer of \$50,000 from the Wickham Park Treatment Pond Project and to authorize the City Manager to sign the grant agreement on behalf of the City. Motion carried unanimously.

16. COUNCIL ACTION RE: Consent Agenda

Moved by Walker/Contreras for approval of Items 16 'a' through 'f' as recommended.

Staff responded to questions on items "a" and "c"; however, the items were not removed from the consent agenda.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. A request for approval of renewal of the agreement between Space Coast Area Transit and the City of Melbourne, scheduled to expire on September 30, 2002, for an additional term of one year.
- b. Annual contract to provide continuing maintenance and support services to Payroll and Human Resources, Cyborg Systems, Chicago, IL - \$26,184.51.
- c. Annual contract for Water & Sludge Analysis Services, ELAB, Inc., Ormond Beach, FL - \$62,580.
- d. Establish Capital Improvement Project No. C02314 for fencing improvements at Canova Booster Station and Patrick Water Tower and appropriate funds from the Water & Sewer Miscellaneous account - \$14,052.50.
- e. Supplement No. 110 to the Continuing Consultants Contract for Lake Washington Sludge Facility Electrical Upgrade, Project C02304 - \$20,800.

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Added to the agenda:

- f. RESOLUTION NO. 1771: A resolution relating to approval of the second amendment to the Honor America Lease Agreement on property located in Township 28S, Range 37E, Section 3.
17. COUNCIL ACTION RE: A request by Mr. Theodore H. Willing to return to Council for action on the matter of the Melbourne Housing Authority.

Mrs. Hand noted that Mr. Willing asked to be allowed 15 minutes for his presentation.

Moved by Walker/Poole to abide by the five minute policy. Motion carried. (Council Members E. Palmer and C. Palmer voted nay.)

Mr. Willing stated he is appearing before Council rather than filing a First Amendment civil rights charge against the Melbourne Housing Authority Board to spare the City of Melbourne bad publicity.

All Housing Authority money is taxpayer money that is provided for the safe, decent, sanitary housing for eligible tenants. He stated that the Melbourne Housing Authority and the Executive Director of the Brevard Family of Housing Authorities have developed a relationship that is detrimental to the tenants. The relationship has the appearance of a private club. They fail to provide sufficient, timely information of a public nature to the tenants. He discussed the Melbourne Housing Authority agendas and meetings and what he believes are discrepancies in the noticing of meetings and keeping of minutes.

Mr. Willing continued. There is a question as to whether or not the Melbourne Housing Authority is an entity unto itself and not subject to any control by the City Council. He stated Council has the right and the duty to enforce the removal of the commission for neglect of duty. Mr. Willing stated that what he requested at the last meeting was reasonable. The Housing Authority has not responded to him. It is incumbent upon Council to have them answer questions about what they have been doing for the past 4½ years and what they are now engaged in – using money from the Housing Authority to hire attorneys to protect them from their own inefficiency. Council must have the Housing Authority justify themselves. They are under Council jurisdiction.

Mr. Palmer stated that Mr. Willing has gotten a lot accomplished at Ramshur Towers. During Mr. Willing's last presentation to Council there was a lot of discussion about the windows, and the completion of cabinets and all doors. He asked Mr. Willing if all this work was satisfactory. Mr. Willing replied that the tenants tested the doors and they are not waterproof and he has received complaints that some are leaking. Mr. Palmer commented that he has been advised that the doors are functional and don't leak. He asked Mr. Willing if he has seen any doors that leak. Mr. Willing responded no. Mr. Palmer questioned whether the elevators are functioning. Mr. Willing reported that for a short time both elevators were out and part of the time one or the other has been out, but confirmed that they are working now.

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Mr. Palmer reported that since the last meeting he has been meeting with Mr. Chavers, who provided some information about the windows and their cost. The problem is that scaffolding will be required to replace some of the windows. Two hundred of the windows can be installed without the use of scaffolding and will cost approximately \$95,000 to complete this work. Where scaffolding will be required will cost approximately \$217,000. Funding is a problem and is currently being investigated. Mr. Palmer advised that windows installed at a height over five stories require a special type window that is strong enough to withstand hurricane strength wind. This is why they cost more. They are looking for a solution for the replacement of those windows.

Mr. Palmer continued, stating Ramshur Towers, with 101 tenants, is a large building that requires a large amount of upkeep to maintain. From the exterior it looks very nice. He discussed the fishing pier boardwalk that was done with volunteer labor.

Mr. Willing responded that he never expected it would be resolved quickly. He knew it would take more than one grant over two to three years.

Responding to Mr. Palmer, Mr. Willing confirmed that the kitchen cabinets were finished and are acceptable. He discussed the construction of the fishing pier. He stated that until he complained that the pier was not accessible under ADA requirements nothing was done. This is the way all of the projects have been going. Mr. Willing stated that the law regarding Americans with Disabilities was put into place in 1990. Following a brief discussion, Mr. Palmer said he knows that the reality is such that it takes money and time to come into compliance with the ADA requirements.

Mr. Palmer agreed to attend the next Housing Authority meeting and discuss these issues with them. He said he will keep Council and Mr. Willing informed.

Mr. Gougelman stated that Mr. Willing is asking for the removal of the commissioners; this is governed under Florida Statutes. He explained the process for removal of a commissioner. He added that Council Member Palmer has presented an approach that might be of assistance in getting a handle on the facts.

17. COUNCIL ACTION RE: A request for approval of the Co-Funding Agreement between the City of Melbourne and the American Water Works Research Foundation (AWWARF) for the Treatability of Algal Toxins Study using Oxidation, Adsorption, and Membrane Technologies.

From the agenda report: The proposed co-funding agreement is for participation in the American Water Works Research Foundation (AWWARF) algal toxin study. Council will recall the issue regarding the potential impact of algal toxins in Lake Washington. It was determined that the toxins are present but at levels far below the World Health Organization guidelines. The City has routinely monitored for the toxin presence ever since. The levels have been consistently far below guidelines.

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Co-participants include the City of Cocoa and the St. Johns River Water Management District (SJRWMD). The proposed study will examine the frequency and occurrence of blue-green algae and algal toxins and appropriate treatment technologies. The City's financial commitment would be \$67,000.

It is important that the City participate in this program since it is likely the results will lead to the development of future regulations in regards to algal toxins. Our participation will ensure the City's input into the development of those potential regulations.

Moved by Poole/E. Palmer to authorize the City Manager to execute the agreement with the AWWARF to complete the algal toxin study at a cost not to exceed \$67,000. Motion carried unanimously.

19. ORDINANCE NO. 2002-55: (First Reading) A proposed ordinance to amend Chapter 9, Civil Emergencies, as recommended by the City Code Review Committee, Section 3.

Attorney Gougelman read Ordinance No. 2002-55 by title.

From the agenda report: Based on Attorney Gougelman's review of the Chapter the committee agreed to repeal most of the Chapter. The current Code mirrors the State Statutes; therefore, it is best to repeal most of the Code and simply follow the state law. The State Statutes carry stiffer penalties for violations.

Moved by Walker/Contreras for approval of Ordinance No. 2002-55.

Mrs. Palmer asked if the ordinance is a restatement of Florida Statutes. Mr. Gougelman responded that it is basically a clean-up that is in compliance with the State Statutes. The ordinance is worded very similar to Florida Statute 875.05.

Mr. Hill explained that it removes components regarding our emergency measures under the City Code and adopts the State Statutes. We have a local provision about who declares an emergency in conjunction with the State Statute. This ordinance repeals the local code provisions on what can/can not happen during an emergency.

Mrs. Palmer stated as the statute reads people could have been justifiably shot and killed during the civil rights demonstrations.

A brief discussion followed regarding the history of the State Statute. Mr. Gougelman confirmed that this Statute was adopted in 1868 and was in place during the civil rights movement.

Discussion followed regarding the designating official. Mr. Gougelman advised that the rationale for the City Manager is under our Charter, the Chief of Police is subordinate to the City Manager. He pointed out that not every city's Chief of Police is subordinate to the City Manager, some are independently appointed by the City Council.

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Responding to Mrs. Palmer, Mr. Hill confirmed that we are adopting a local code that states we will follow all State Statutes, but locally, based on our Charter, the City Manager has the authority to declare a state of emergency and bring it to Council as soon as possible to ratify.

The question was called. Motion carried unanimously.

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

20. COUNCIL ACTION RE: A request for approval of an agreement to purchase a .56-acre parcel of property located at the northeast corner of Highland Avenue and Eau Gallie Boulevard.
- a. Approval of an agreement to purchase a .56-acre parcel of property located at the northeast corner of Highland Avenue and Eau Gallie Boulevard.
 - b. Approval of Loan Agreement (Exhibit B of Resolution No. 1769)

This action is consistent with Council's July 9 action to purchase the property.

Item (a) is the contract for the sale of the Eau Gallie property for \$253,000. The Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee reviewed the contract at its July 11, 2002 meeting and recommended approval of the contract. Council approved the purchase at its July 9, 2002 meeting.

Item (b) is the loan agreement for the Community Redevelopment Agency (CRA) to borrow \$260,000 from the General Fund of the City of Melbourne to purchase the property. The amount is more than the purchase price of the property to allow adequate funds to cover the closing costs and associated costs of purchasing property. At its July 11, 2002 meeting, the Advisory Committee recommended approval of the loan agreement. The annual debt service amount will be \$23,061.78.

Moved by E. Palmer/Contreras for approval of an agreement to purchase a .56-acre parcel of property located at the northeast corner of Highland Avenue and Eau Gallie Boulevard and approval of the loan agreement for the Community Redevelopment Agency to borrow \$260,000 from the General Fund of the city of Melbourne to purchase the property. Motion carried unanimously.

At this point, the City Council reconvened.

- c. Resolution No. 1769: A proposed resolution authorizing a loan in an amount not to exceed \$260,000 from the General Fund to the Olde Eau Gallie Riverfront Community Redevelopment Agency to purchase a .56-acre parcel of property located at the northeast corner of Highland Avenue and Eau Gallie Boulevard.

Attorney Gougelman read Resolution No. 1769 by title.

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From the agenda report: This resolution authorizes a loan from the General Fund to the Olde Eau Gallie Riverfront Community Redevelopment Agency and provides for the repayment of the loan over 17 years from the revenues of the Tax Increment Fund in the Eau Gallie Redevelopment District without a prepayment penalty. The General Fund will receive interest on the loan at the rate earned on investments managed by Public Financial Management plus 1%.

The 17-year initial period is to match the available redevelopment funds. Should additional increment funds become available in future years, the term can be decreased by additional payment.

Moved by Walker/E. Palmer for approval of Resolution No. 1769. Motion carried unanimously.

21. RESOLUTION NO. 1770: A resolution authorizing submittal of an application for the Front Porch Florida designation for the Booker T. Washington neighborhood for the fiscal year 2002.

Attorney Gougelman read Resolution No. 1770 by title.

Moved by C. Palmer/Walker for approval of Resolution No. 1770. Motion carried unanimously.

22. COUNCIL ACTION RE: Update on the relocation of Fire Station #4.

From the agenda report: At the July 9 meeting, Council Member Ed Palmer asked for an update on Fire Station No. 4. Design for the project is underway. Architect Herb Sands has already submitted preliminary drawings to staff. The current schedule calls for bidding in November 2002 with construction completed by December 2003.

In the meantime, Fire Chief Chamberlin has indicated a need to construct additional office space at Fire Station 71 on Eau Gallie Boulevard. Staff realized that a much greater economy can be realized if this space were constructed at the new fire station.

The agenda package includes a summary of this issue as well as plans for the original concept and for the alternative.

Mr. Hill stated as a matter of priority, addition of the office space would be lower; however, it makes sense to consider it now. Staff needs direction from Council on the overall project before it gets underway.

Mr. Palmer stated that because it only adds \$100,000, it makes economic sense to include the administrative offices during the construction of the fire station.

Moved by E. Palmer/C. Palmer to include the administrative offices in the proposed fire station plan.

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Mrs. Poole stated that she cannot support the location. She discussed the history of the Wells property and noted that the property was given to the City to remain as a park. Based on this, she cannot support the motion; however, she fully supports a new fire station.

The question was called. Motion carried. (Council Member Poole voted nay.)

Added to the agenda:

- 22.1 RESOLUTION NO. 1772: A resolution authorizing participation in the Florida Main Street program with a multi-year funding pledge.

Attorney Gougelman read Resolution No. 1772 by title.

Mr. Hill reported that this information was provided to him after the agenda was published. This resolution and a commitment letter are vital components to the application for the Main Street Program. On July 9 Council voted to support the efforts of the Downtown Melbourne Association, the Redevelopment Committee, and the community by supporting their effort in pursuing the Main Street Designation.

Specifically, Council approved the expenditure of funds totaling \$50,000 a year for the next three years in order to hire a full-time coordinator to manage the Main Street Program.

Moved by Poole/Walker for approval of Resolution No. 1772 and the commitment letter to the Florida Department of State. Motion carried unanimously.

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Gougelman advised that the City has received an opinion from the Circuit Court of the Eighteenth Judicial Court in the Florida Institute of Technology vs. City of Melbourne case. The court unanimously found against the City of Melbourne. He read the following excerpt: "In the instance case, there was not a scintilla of competent substantial evidence presented at the hearing which would permit the City to deny the site plan approval of the applicant on the basis that it failed to comply with the site plan ordinance." Another issue that the Circuit Court referenced was concerns raised by FIT about alleged bias of Council Member Poole. He stated Council may want to consider an appeal.

Responding to Mrs. Hand, Mr. Gougelman reported that the cost to appeal would be \$5,000 - \$10,000. Most of the research was done for the Circuit Court proceeding. The briefs can be cannibalized and put in a format for the Appellate Court with a slight rewrite to reflect the points raised by the Circuit Court. To date the City has spent approximately \$7,500.

Responding to Mrs. Poole, Mr. Gougelman reported that the Florida League of Cities would not provide any legal assistance in this case.

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Moved by Poole/Walker to meet at 7:30 p.m. on July 29 to determine whether to move forward with an appeal. Motion carried unanimously.

Mr. Gougelman pointed out that his vacation for this week has been canceled. He requested approval of vacation leave the week of August 12, and pointed out that Suzanne Novak will attend the August 13 Council meeting. Council concurred.

Mr. Palmer asked about the status of the property on Riverside Drive which the City had title to that has since reverted back to the owner, Beville Outlaw. Mr. Gougelman reported that the property was reappraised at \$140,000 (up from \$110,000). However, Mr. Outlaw was hoping for a price around \$165,000 as a tax write-off. He would consider trading property if the City would like to offer some industrial property on Harper Road.

A brief discussion followed regarding another appraisal. Attorney Gougelman said he does not believe another appraisal would be much different.

Mr. Hill updated Council on the hiring of a replacement of the Assistant City Manager. He intends to make a decision by the end of this week.

Mrs. Palmer discussed the County Commission's action regarding the needed repair to the Fountainhead Subdivision canal seawall. The County agreed that the canal belongs to them; however, they also determined that a 20' easement exists on the properties abutting the canal. Commissioner Higgs suggested that the capacity of the canal could be increased by taking the 20' easement. Mrs. Palmer requested Council appoint her to speak to the Commission on this item should the County pursue this.

Mr. Hill stated that it is staff's opinion that it is the County's seawall and they should repair the wall. Staff will continue to work with the County and monitor what they are suggesting.

24. ADJOURNMENT

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

The meeting adjourned at 11:34 p.m.

/s/
Assistant City Clerk – 8/2/2002

Approved by Council _____