

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 27, 2002

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

1. Reverend Leonard Weaver, Greater Faith Temple Church of God in Christ, gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

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

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented the following proclamation:

“Melbourne Firefighters Appreciation Week;” accepted by Frank Avilla, Tom Flamm, and Jim Leitz, Melbourne Fire Department; and Jennifer Bailey, Muscular Dystrophy Association.

5. APPROVAL OF MINUTES

- July 29, 2002 Special Meeting
- August 13, 2002 Regular Meeting

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

6. CITY MANAGER’S REPORT

Mr. Hill reported that the third quarter budget review document was distributed this evening. Action will be scheduled for the September 10 meeting.

Additionally, Mr. Hill referenced the memorandum requesting an item be added to the agenda regarding property on Eber Road.

Moved by Walker/Hand to add Item 20.1 to the agenda. Motion carried unanimously.

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7. PUBLIC COMMENTS

Ronald Newkirk, 232 Cinnamon Lake Circle, stated that he believes the City Council showed disrespect for Council Member Poole at the last regular meeting when the airport item was being discussed.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2002-47 (CU-2002-05/SP-2002-10/PRINCETON MINI-STORAGE): (Second Reading/Public Hearing) An ordinance granting a conditional use to allow a mini-storage facility on a 4.123-acre portion of a lot on a commercial development site in a 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.) (First Reading 8/13/2002)

Attorney Gougelman read Ordinance No. 2002-47 by title. There were no comments from the public.

Moved by Hand/E. Palmer for approval of Ordinance No. 2002-47. The roll call vote was:

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

Nay: Contreras and Poole

Motion carried.

Mrs. Poole said she voted nay because fill was brought in from off-site and that is not legal.

9. COUNCIL ACTION RE: Options on County Code Enforcement regarding fill materials brought in from off-site at the Princeton Mini-Storage site. (Requested by Council 8/13/2002)

Mr. Hill reviewed the agenda report. At the August 13 meeting, Bobby Bowen, Brevard County Code Enforcement, discussed actions he took to determine whether or not illegal materials were dumped in the retention pond on this site. At that time he reported that the contractor, Doug Connor, acknowledged that 300 truck loads of clean fill were brought in from another location in Brevard County and that he has a state license to operate throughout the state.

Mr. Bowen confirmed that the soil borings show that no unsuitable fill was used in the retention or common areas. He also noted that he does not have any sworn testimony from eyewitnesses that construction debris was buried on site.

Mr. Bowen said the admission by Mr. Connor regarding fill being brought in from off site is a violation of the county code. Therefore, Council could consider the following options:

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- Option 1: The county will defer to the City of Melbourne and the city may exercise prosecutorial discretion in not pursuing the alleged violation of (County Code) Section 94-76.
- Option 2: If the city wishes to obtain a “findings of fact” from the Brevard County Special Master to prevent a recurring violation, the county will set this case for hearing. If Mr. Connor repeats the violation he will be subject to a citation that will put the matter before the County Court.
- Option 3: If the city wishes to seek a fine in addition to the “findings of fact”, the county will set the case for hearing before the Special Master and ask for a fine of up to \$5,000. If the county prevails the fine will run in favor of the county.

If Council would like to see the county begin enforcement of this code within the city limits, a “findings of fact” should be sought. This would signal to others engaged in the practice that it is no longer acceptable. Proposed city regulations governing development would also include such a prohibition.

Mrs. Poole stated that, at a minimum, she would like the city to pursue a “findings of fact” from the Brevard County Special Master.

Mr. Contreras reported that he received another anonymous call from a tipster on this issue. The caller indicated that there are three individuals who are willing to come forward, present evidence and/or testify. Mr. Contreras said he will forward the information to Mr. Bowen. He added that the witnesses have indicated that they can pinpoint where hazardous materials – oil drums, car batteries, parts, etc. – are buried on the site.

Mrs. Palmer asked if the city should wait to make a decision until the witnesses reveal further information. The Mayor said he believes the city should take some action now.

For clarification, Attorney Gougelman explained the difference between Options 2 and 3.

Mr. Palmer said a lot of allegations have been made anonymously and the city has conducted an investigation. Unless there is hard evidence, he said he believes the city is “barking up the wrong tree.” Mrs. Hand agreed and added that currently there are only allegations from tipsters. Mrs. Poole said they (tipsters) are afraid to come forward for safety reasons.

Moved by Poole/Contreras to proceed with Option 3. (This motion was not voted on. A new motion was made after the item was reconsidered and new information presented.)

Mayor Buckley said he can’t support this motion. So called tipsters should be contacting Bobby Bowen from the county – not the city. He added that he is willing to go along with Option 2 especially since Mr. Connor has voluntarily provided information.

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Mr. Contreras said it is his understanding that one individual has contacted Mr. Bowen and is willing to reveal himself and provide witnesses. He referenced Options 2 and 3 and said the city doesn't lose anything by going with Option 3.

Mrs. Poole commented that if material has been dumped, it doesn't mean that Mr. Connor is personally involved.

Following a brief discussion, Mrs. Palmer said she would be comfortable with Option 3 if other materials were found on site. However, if the use of clean fill is a common practice, she said she would hate to selectively enforce this Code.

Moved by Buckley/Hand to postpone this item until Bobby Bowen (Brevard County Code Enforcement) has had a chance to investigate.

A brief discussion followed. Mrs. Hand called a Point of Order based on a motion to postpone being on the floor.

The question was called. Motion carried. Council Members Poole and Walker voted nay.

Note: The following additional discussion occurred immediately after Item 16 was heard:

Mayor Buckley noted that Bobby Bowen is present.

Moved by Buckley/Poole to reconsider this item. Motion carried unanimously.

Mr. Hill reported that during the Council meeting break he spoke to Mr. Bowen. If Council wishes to proceed with obtaining a findings of fact, Mr. Bowen is prepared to do that with the knowledge that there are additional allegations being made and potential witnesses. If that were to occur, a fine would be pursued based on any new information.

Mr. Bowen said the new information rises to a different level, up to and including possible criminal charges. He noted that the county is prepared to deal with that; however, credible evidence is needed.

Mr. Bowen confirmed that he would like Council to go with Option 2, which would allow the county to go to Option 3 and/or beyond based on the evidence.

Moved by Walker/Contreras to proceed with Option 2. Motion carried unanimously.

Council proceeded with Item 17 on the agenda.

10. ORDINANCE NO. 2002-56 (Z-2002-930): (Second Reading/Public Hearing) An ordinance to change the zoning from R-2 (One-, Two- and Multiple-Family Residential) to C-1A (Professional Offices and Services) on the north 200' of a 4.97-acre portion of a 21.74-acre parcel, located on the south side of Eau Gallie Boulevard, east of Wickham Road, and west of Croton Road. (Owner – Beverly Anne Rouede, Trustee) (Applicant – Diamond Bay Builders, Inc., by Jake Wise, Representative) (First Reading 8/13/2002)

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Attorney Gougelman read Ordinance No. 2002-56 by title. There were no comments from the public.

Moved by C. Palmer/Walker for approval of Ordinance No. 2002-56. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2002-57 (LDR-2002-05/FOC-2002-05): (Second Reading/Public Hearing) An ordinance amending Chapter 25, Signs, relating to maintenance of signs, size of neighborhood identification signs, and prohibiting electronically changed signs in residential neighborhoods. (First Reading 8/13/2002)

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

Moved by Poole/Walker for approval of Ordinance No. 2002-57. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2002-58: (Second Reading/Public Hearing) Amending Chapter 21, Police and Law Enforcement, as recommended by the City Code Review Committee, Section 4. (First Reading 8/13/2002)

The City Attorney read Ordinance No. 2002-58 by title. There were no comments from the public.

Moved by Hand/Walker for approval of Ordinance No. 2002-58.

Mr. Palmer referenced the repeal of the two sections, which prohibit loitering for the purpose of engaging in drug related activity and loitering for the purpose of engaging in prostitution. Following a brief discussion, Attorney Gougelman assured Mr. Palmer that State Statutes are in place prohibiting prostitution and drug related activity. The portions of the Code we are repealing make loitering for a specific purpose illegal and that has previously been found to be unconstitutional.

The question was called. The roll call vote was:

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

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Nay: None

Motion carried unanimously.

NEW BUSINESS

13. SITE-PLAN APPROVAL (SP-2001-03) FLORIDA TECH SITE PLAN: (Public Hearing)
Court ordered rehearing of a request for site plan approval on an approximate 10.22-acre portion of the Florida Institute of Technology (FIT) campus, in an I-1 (Institutional) zoning district, located on the west side of Babcock Street, south of Vida Way and Ruffner Road and east of Country Club Road. (Owner, Florida Institute of Technology; applicant, John Milbourne; and representative, Tom Berley, University Housing Services, Inc.)

From the agenda report: This is a Court ordered rehearing on a site plan for student apartments on the campus of the Florida Institute of Technology. The hearing results from the Circuit Court of the Eighteenth Judicial Circuit order remanding the site plan back to the City of Melbourne for action that would “not be inconsistent” with the opinion rendered by the court. It was the opinion of the court that the site plan was improperly denied and should have been approved based on the evidence provided and the requirements of City Code.

Following the denial of the first plan, Florida Institute of Technology submitted a second plan for the student apartments with complete engineering to indicate how the drainage would be handled in the flood plain. That plan was also denied. Council has indicated that they would prefer the second plan to the first plan. The City Attorney has indicated that approval of the second plan could be considered if it was agreeable to Florida Tech.

There were three basic changes between the first and second plans:

- Drainage: For the second plan the drainage was engineered to meet the 100-year storm event. City Code requires engineering to meet the 25-year storm event. Additionally the applicant considered the flood elevations that were proposed by Brevard County but have not been adopted. These elevations are more restrictive than the FEMA floodplain designations.
- Site Design: On the second plan the buildings were arranged so that only a corner of the building faces the Hickory Hills Subdivision.
- Access: On the second plan there is no access to the site from the Hickory Hills Subdivision.

The Planning and Zoning Board recommended approval of the first plan with several stipulations. Florida Tech is willing to proceed with development based on the second plan. The attorneys for Florida Tech and the city have agreed that this will not violate the Court Order as long as it is agreeable to the applicant. Should Florida Tech be denied access to Babcock Street by FDOT they will have the option of access on Ruffner Road

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as guaranteed by the court because the plan approved by the court provides this option. This is not expected to happen.

City staff has recommended approval of Site Plan SP-2001-04 (second plan) prepared by Teimouri & Associates, Inc. of Melbourne, Florida consisting of a one-sheet plan with Project No. 2001-127 dated September 5, 2001, with the following stipulations:

- a. A change to the site plan will require reevaluation of the site plan by the Engineering Department and the Planning and Economic Development Department. A 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 by ten percent in the amount of open space or vegetative areas on site; 2) an increase by more than ten percent in the size or height of the buildings; 3) any proposal which would allow for a fully operating driveway connection without gated/controlled access; or 4) any construction encroachment within the FEMA and Code designated floodway.
- b. All trees in the 55-foot buffer along the north property line shall be preserved, except where the proposed driveway access to Babcock Street is located as depicted on the site plan.
- c. Provide a six-foot high wood stockade fence along the north property line where the proposed development abuts the Hickory Hills Subdivision.

Mayor Buckley informed Mrs. Poole that based on the advice of the City Attorney, she cannot vote on this item; therefore, she cannot be a part of the discussion. Mrs. Poole referenced the opinion issued by the circuit court and said she has been misquoted and wants it clarified. She added that the order indicates that "Poole *should* disqualify herself and not participate in the proceedings."

Mrs. Poole asked Attorney Gougelman if she must disqualify herself. Attorney Gougelman explained that academic arguments were made before the court regarding the voting conflict of interest law. He noted that the court rose above that and chose to use the words "disqualify" rather than "abstain." The court further required Mrs. Poole to "not participate in the proceedings." This language usually refers to discussion.

Mr. Gougelman said that based on the language used by the court, he personally would not engage in discussion on this item. He added that any action Mrs. Poole may wish to take is up to her; however, it is at her own peril. The court could hold her in contempt of the order.

Mrs. Poole referenced previous information supplied by Attorney Gougelman on voting conflicts. The information indicates that presently there is no Florida law dealing with a Council Member "disqualifying" himself/herself. The law is very explicit about when a member must abstain from voting. The Commission on Ethics has ruled that bias is not a reason for abstaining. Continuing, Mrs. Poole said she asked a retired judge if the word

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“should” is mandatory and he said that the wording leaves the issue open. She concluded by saying that she doesn’t want to participate in the discussion, she wants to vote.

Attorney Gougelman said the comments raised by Mrs. Poole were made to the court. He repeated that if it were him, he would not discuss the item and would not vote on the item.

Mrs. Poole referenced the opinion, which indicates that she appeared at a Florida Department of Transportation hearing. She said that is untrue and should be stricken from the opinion. Attorney Gougelman said that at this point, it is too late to have the opinion revised. A brief discussion continued.

Mayor Buckley opened the public hearing.

James DeSantis, Vice President of External Affairs, Florida Tech, thanked Council for the time and energy devoted to this issue. He said Florida Tech regrets that legal measures had to be taken in order to accomplish what is fair. He added that the university has an open door and is extending its hand to the community. He asked for Council to approve the site plan.

Mayor Buckley asked Mr. DeSantis if he is referring to the first or second site plan. Mr. DeSantis said the court acted on the first plan; however, as a good neighbor, they are willing to do whatever is necessary to make a good, compatible plan. He added that in some ways the second plan is better.

Mrs. Walker said that answer makes it sound like there is a third plan. Mr. DeSantis replied no and repeated that the court approved the first plan. Florida Tech came forward with the second plan to respond to objections in the first plan.

Mayor Buckley asked again which plan Florida Tech is recommending approval of. Mr. DeSantis said the second plan is their preference. It is better for the neighborhood, more functional, and provides for better drainage.

Mr. Contreras referenced the order, which in part states, “...Florida Institute of Technology should not be subject to ad hoc legislation by the City Council of Melbourne imposing additional requirements to obtain site plan approval that do not, and have not, applied to other applicants in the past.” Mr. Contreras said the lesson is clear. He added that Florida Tech working in harmony with all concerned will provide for a win/win situation.

Nancy Johnson, 2514 Ruffner Road, suggested Council review the site plan process. She added that if a plan is denied and the applicant has enough money to hire attorneys and go to court, Council’s vote doesn’t count. She added that perhaps the Comprehensive Plan needs to be more specific because there is a problem with the process.

Mrs. Johnson discussed inadequate parking at the school and the footbridge proposed to go over the creek. She submitted an aerial photograph to support her statement regarding

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parking. Mrs. Johnson added that the county has indicated the footbridge cannot impede access by maintenance trucks. The footbridge will have to be 15' high in order to provide this access.

Moved by Contreras/E. Palmer for approval of Site Plan SP-2001-04 (second plan) subject to the proposed stipulations.

Mrs. Palmer said she believes that when the court saw that there was obvious bias and partiality, it may not have taken a good look at the legitimate drainage concerns. She stressed that Council cannot rule in such a way that a person's ability to use their property is taken away. She commented that she still sees drainage on this site as a legitimate concern. FIT is making a huge gamble that this site will drain.

Mrs. Walker said she does not feel Florida Tech has served as a good neighbor. She added that she knows of too many things that have gone on and she is familiar with many on staff. She stated that, legally, she has to support this plan. Mrs. Walker agreed that drainage is a concern on this site.

Mayor Buckley clarified that bias is not the issue. The issue is that a Council Member violated the quasi-judicial procedures on this item.

Mrs. Poole submitted a letter from the Hickory Hills residents regarding the site plan.

The question was called. The roll call vote was:

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

Nay: None

Mrs. Poole stated that she is disqualifying herself by force of court (copy of court opinion attached to original minutes).

Motion carried unanimously.

14. COUNCIL ACTION RE: Memorandum of Understanding between the St. Johns River Water Management District and the City of Melbourne for the removal of materials from the Lake Washington Water Treatment Plant facilities for the Lake Apopka Soil Amendment Project.

Moved by Poole/E. Palmer to authorize the City Manager to execute the Memorandum of Understanding with the SJRWMD. Motion carried unanimously.

15. COUNCIL ACTION RE: Consent Agenda

Mrs. Walker asked that items "i" and "j" be discussed separately.

Moved by Hand/E. Palmer for approval of items "a" through "h" as recommended. Motion

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carried unanimously.

Items “a – h” approved as follows:

- a. Purchase of Filtrasorb F816 mesh carbon from Calgon Carbon Corporation, Pittsburgh, PA - \$178,500.
- b. Supplement No. 109 to Continuing Consultant Contract for Rio Lindo Canal Dredging, Project No. 01612 - \$10,000.
- c. Supplement No. 116 to Continuing Consultant Contract for Construction Inspection on U.S. 1 Widening Utility Relocations Post Road to Pineda, Project No. 01306 - \$36,000.
- d. Funding for the University Boulevard Landscaping Project (retrofitting the landscaped medians between L.T. Weaver Boulevard and Grant Street for irrigation) in the amount of \$8,000 and the transfer of \$6,921 from CDBG Clearance and Demolition to University Boulevard Landscaping Project.
- e. Resolution No. 1775: A resolution authorizing the City Manager to submit a grant application to the Florida Department of Environmental Protection for grant funding through the Florida Recreation Development Assistance Program (FRDAP) for improvements at Carver Park.
- f. Resolution No. 1776: A resolution authorizing the City Manager to submit a grant application to the Florida Department of Environmental Protection for grant funding through the Florida Recreation Development Assistance Program (FRDAP) for improvements at Southwest Recreation Complex.
- g. Resolution No. 1777: A resolution calling for a General Municipal Election to be held November 5, 2002 to elect three Council Members, one each from Districts Two, Four and Six.
- h. Right-of-way Use Agreement with Pearls Café, Inc. for encroachment into right-of-way on North McClendon Street.

Mrs. Walker stated that the applicant has asked to speak on item “i.”

Len Fallen, applicant, asked for approval of the agreement.

Regarding item “j”, Mrs. Walker said she discussed this with Mr. Hill and thought that the other members would be interested. Mr. Hill explained that this is a new agreement. The state will now reimburse the city for maintenance.

Moved by Walker/E. Palmer for approval of items “i” and “j.” Motion carried unanimously.

Items “i” and “j” were approved as follows:

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- i. Right-of-way Use Agreement with Leonard Fallen to construct a fence in the right-of-way of an unimproved alley.
- j. FDOT Highway Lighting, Maintenance, and Compensation Agreement - \$30,975 annually (paid by FDOT to the city).

Recessed: 8:51 p.m.

Reconvened: 9:02 p.m.

16. ORDINANCE NO. 2002-59 (CU-2002-08/SP-2002-17): (Public Hearing/First Reading) An ordinance granting a conditional use to allow for the consumption of alcohol on the premises on four lots, located east of Livingston Street, south of Strawbridge Avenue, and north of New Haven Avenue (Owner - Coral Viejo, Inc.) (Applicant – 702, L.L.C., by Representative - Philip F. Nohrr) (P&Z Board 8/1/2002)

Attorney Gougelman read Ordinance No. 2002-59 by title.

Mrs. Braz reviewed the agenda report, discussed the history, land use, and the surrounding property. The site had been used as the First Baptist Church for many years (the church sold the property and moved to a new site on Dairy Road). A portion of the building is now used as a private (charter) school.

The City Code requires a conditional use for the consumption of alcohol on the premises when the use is not associated with a restaurant or hotel. The business operator proposes to provide a special events/conference/reception and entertainment facility that will provide specialty dining and social events such as business dinner meetings, weddings and other similar events. This is similar to events that are often hosted by the King Center or held in the Melbourne Auditorium or Front Street Civic Center. The request is very much like the conditional use granted to Florida Market Place.

The center may also serve food but the presumed revenue from food sales may be less than 50% of total sales and as a result is considered a bar or lounge and not a restaurant per City Code. The area depicted as the future terrace/patio (in the package) is also an area where alcohol service is proposed. Approximately 6,100 square feet (19%) of the building could be used for serving alcoholic beverages.

Limitations on occupancy would be governed by the Building Code. No specific seating has been determined since seating will vary depending on the type of event. Sketches provided by the applicant indicate 432 seats in the reception hall.

The standards of granting a conditional use include ensuring that the use is in harmony with the Zoning Code and adjacent uses. Therefore, any non-conforming conditions of the site such as handicapped parking and landscaping should be improved to meet Code.

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No expansion of the building is taking place and therefore, no additional parking is required. Minimum parking required for a lounge, reception hall or place of assembly is one parking space for each two seating places or one parking space for each 65 square feet of floor area for the proposed use. However, since the renovations result in no increase in the floor area of the structure no additional parking is required in the Downtown Redevelopment Area. The site has vehicular access to the parking lot from Strawbridge Avenue and on-street parking is readily available in the downtown area. This existing unimproved parking lot has been used on the site for many years, probably when the building originally was constructed as a church, and contains approximately 50 parking spaces. Most of the lot is unpaved and a part of the lot is leased by the city for public parking.

Landscaping should be provided within the parking lot area per City Code. Other than the existing unimproved parking lot and parking lot landscaping, the site conforms to the Land Development Regulations. By providing Code-compliant landscaping (trees and shrubs) the applicant will significantly reduce the non-conformity. If the parking lot is paved, retention would be required.

There will be amplification within the building. No outside amplification should be permitted without special activity permits. All amplification shall comply with the new noise ordinance.

In order to ensure that trash is controlled, outside trash receptacles should be required at or near entrances to the building and at select locations within the parking lot.

The site is not considered to be within 450 feet of a church, school or other such establishment although a private school will occupy a portion of the first floor of the building until the second floor is completed. The Code required separation of a school from a place that sells alcohol for consumption on the premises does not apply in this case because the school is a tenant and the separation requirements are not reciprocal as determined by case law.

Alcohol should not be served at the same hours that the school is in session. Code permits businesses that serve alcohol to operate from 7:00 a.m. to 2:00 a.m., Monday through Saturday and Sundays from 1:00 p.m. to 2:00 a.m. The business may not operate outside of these hours even if the applicant is conducting or hosting a private event or party.

The applicant has been granted an exemption from having to provide an Environmental Impact Assessment report since the site is totally developed and no known endangered or threatened species occupy the property.

The Planning and Zoning Board reviewed the request at its August 1 meeting. After discussion concerning the statute requirements and the recommended conditions of approval, the Board decided to add a condition that the permit would be valid for one year and that the applicant will need to return to the Council for permanent approval. This is similar to the same provisions placed on the "That's It Antique Bar" a few years ago.

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The Planning and Zoning Board recommended approval of CU-2002-08 with the findings listed in the agenda package and the following conditions:

- a. The plan of development shall be substantially consistent with the three-sheet plan consisting of a drawing for 702 Downtown Office and Convention Center prepared by Holeman Suman Architects dated 6-17-2002 with project number 01036.04 (Exhibit A), a marked copy of the site survey by Denes Land Surveys indicating the Suites and Halls (Exhibit B), and a marked floor plan indicating areas designated for alcohol sales (Exhibit C) all collectively referred to as SP-2002-17.
- b. The applicant shall provide Code compliant landscaping materials (trees and shrubs) within the parking lot area on Lots 5, 6, 9, and 12 adjacent to the building and provide paved parking and a sidewalk to/from Code required handicapped parking spaces.
- c. Any additional expansion of the areas designated for the consumption of alcoholic beverages with the exception of a walled or gated terrace or courtyard shall require the applicant to apply for an amendment to this development order.
- d. The area where alcoholic beverages are to be served shall not be opened to private events outside of normal operating hours for this use as permitted by Code in Chapter 3, Section 3-1.1 and Section 3-3.
- e. No alcoholic beverages shall be served on the property at any time school is in session. This shall usually be deemed to be from 8:00 a.m. to 3:00 p.m. weekdays during a normal school calendar year.
- f. Trash receptacles shall be strategically placed on the property in close proximity to publicly accessible doorways and in the parking lot area. The property shall be cleaned/cleared of trash debris on a daily basis including after closing hours and prior to opening.
- g. No sound amplification shall be permitted outdoors without first obtaining a Special Activity Permit from the city.
- h. The conditional use shall terminate one year from the date of City Council approval. Prior to the aforesaid date, at the request of the property owner, extension of this conditional use will be considered by the city based on the then effective standards for approval of a conditional use for sale of alcoholic beverages.

These conditions have been included in the proposed ordinance.

Mr. Palmer referenced stipulation “e” and asked how this will be enforced. Mrs. Braz explained that Code Enforcement is located around the corner from the facility. If there is a violation, it will be cited as a Code Enforcement violation.

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Mrs. Hand asked the type of school and the ages of the children. Mrs. Braz said it is a charter school and the applicant can answer further questions.

Mrs. Palmer said she will support the conditional use for a facility this size because it is for special events. She added that she is glad the conditional use will expire in one year because it could allow for a bar to operate at this location.

Mrs. Braz said the conditions would make it difficult for the facility to operate as a bar. She added that because of the money involved in renovation, the applicant will probably object to the last condition.

Mrs. Palmer asked what stipulation could be added to prohibit the facility from becoming a cocktail lounge or bar. Following a brief discussion, Mrs. Braz said the facility could operate as a bar within the proposed stipulations. Mrs. Poole asked if the last stipulation is necessary since Code Enforcement could take action on the other stipulations. Attorney Gougelman said Council adopted a similar stipulation on another facility in Downtown Melbourne. That condition will allow the city to judge the operation. If the facility violates any of the conditions, Code Enforcement can take action.

Phil Nohrr, attorney representing the applicant, stated that the owner, Dr. Armstrong, has strong ties in Downtown Melbourne. Dr. Armstrong has been a participant in the revitalization of the Downtown area. Regarding the school, Attorney Nohrr said the plans were fully disclosed to the school when the lease was drafted; the school has no problem with the requested conditional use.

Continuing, Mr. Nohrr said there are problems with the “one year” language. They can’t spend the amount of money required to renovate without knowing that they can operate beyond one year. Additionally, banks will be reluctant to loan money with that type of stipulation. He stressed that the intent is for the facility to use the conditional use for weddings, anniversaries and special occasions.

Mr. Palmer asked the population of the school. Dr. Armstrong, from the audience, replied 140. Mr. Nohrr added that it is a private school chartered through the Brevard County School Board.

In response to Mr. Palmer, Attorney Nohrr explained why the 450’ separation requirement between a facility licensed to sell alcoholic beverages and a school does not apply. First, the school is waiving enforcement of that requirement. Second, he referenced the doctrine of reciprocity and the associated case law (in the agenda package). He added that if this issue becomes an impediment with Council, they (applicant) could force the school to move. However, that is not what they want to do.

Mr. Palmer said he would like to ensure that the School Board is aware of this.

Mr. Hill said if it is Council's concern that this facility not morph into a bar after the conditional use is granted, there could be a stipulation about the sale of alcohol being

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incidental to special events and not intended to create a bar. Attorney Gougelman added that we would need to define special events.

Attorney Nohrr said they are agreeable to such a stipulation because it is not their intention to create a bar.

Mrs. Palmer said whether or not his client intends a bar at this location, the conditional use allows for a bar. Mrs. Poole asked if a stipulation could provide that the conditional use would cease if the property is sold. Attorney Gougelman replied that the stipulation should be tied to the use rather than ownership of the property.

Mr. Nohrr assured Mrs. Hand that a rave club will not be permitted at the facility. Mrs. Walker asked if a permit would be required from the city for special events. Mr. Hill said not if the special events are located inside the facility.

Mrs. Poole referenced the flier that was circulated in Downtown Melbourne indicating that a rave club was planned at this location. She said someone distributed that in an effort to destroy the entire project.

Mr. Palmer said that if the School Board agrees with this use (being located next to the charter school) then he doesn't have a problem with the request.

Attorney Gougelman discussed the problems associated in Chapter 3 of the City Code regarding the distance or separation requirements. Our current Code is probably not enforceable and needs to be revised.

Ray Armstrong, applicant, discussed his activities in the community. He noted that he has about \$1.2 million invested in the church property at this time. He added that he has adhered to all regulations and standards. Dr. Armstrong said he does not want a bar at this location. He wants the ability to host weddings, special events and parties. He stressed that he would not jeopardize the tremendous investment he has made in this facility.

A brief discussion followed regarding the stipulations. Mrs. Palmer asked Mr. Nohrr how he felt about defining special events in the ordinance. Attorney Nohrr said they would be pleased to do that. Discussion continued.

Moved by Poole/Walker for approval of Ordinance No. 2002-59 with conditions "a" through "g" and a new stipulation that addresses special events (condition will tie the conditional use to special events conducted at the facility). Motion carried unanimously.

At this point, Mayor Buckley announced that Bobby Bowen, Brevard County Code Enforcement is present. Council returned to Item 9 for additional action.

17. COUNCIL ACTION RE: A request for city co-sponsorship of the Downtown Melbourne Fall Art and Craft Festival to be conducted October 19-20, 2002.

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From the agenda report: The Downtown Melbourne Association (DMA) is presenting the 10th Annual Downtown Melbourne Fall Art and Craft Festival, October 19-20. Ms. Betsy Vosburgh, event coordinator, is requesting the city co-sponsor the event by providing police, barricades, fire/code inspections, assistance in hanging banners, and providing fire safety and recycling information. The estimated cost for services is \$3,200 - \$3,400.

The Downtown Redevelopment Committee reviewed the request at its August 15 meeting. The committee recommended that funds be provided from the General Fund as they were last year. Council may wish to further consider this in light of the budget issues we face.

Mr. Hill confirmed for Mr. Palmer that these are direct expenses related to Police overtime, overtime for barricade replacement/removal, etc. If sponsored by the General Fund, each department would absorb the costs. If sponsored by the Redevelopment Fund, the fund would pay the General Fund.

Mr. Palmer asked the event coordinator her recommendation for source of funding.

Betsy Vosburgh, event coordinator, said if the city is a co-sponsor, it would be appropriate for the funds to be taken from the General Fund. The city would be recognized in the media, logo on advertisement material, etc.

Mrs. Poole asked Mr. Hill to confirm the availability of funds in the Redevelopment Fund. Mr. Hill said there is a substantial amount in reserve for future projects.

Moved by Buckley/Hand to co-sponsor the event from the 2002-2003 Fiscal Year redevelopment funds. Motion carried unanimously.

Attorney Gougelman recommended that the Community Redevelopment Agency (which is the City Council) confirm this action. Council convened as the CRA under Item 21 to discuss the purchase of property. Under that item, they confirmed expending redevelopment funds to co-sponsor this event.

18. ORDINANCE NO. 2002-60: (First Reading) An ordinance amending Chapter 17, "Junked, Abandoned & Wrecked Property", as recommended by the City Code Review Committee, Section 3.

Attorney Gougelman read Ordinance No. 2002-60 by title.

Moved by Hand/Poole for approval of Ordinance No. 2002-60.

Attorney Gougelman reported that Code Compliance requested a change to Section 17-10 as follows: "...the city shall remove the same or cause the removal and disposal at public sale, if required by law, at the cost of the owner or occupant..."

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Mrs. Palmer discussed Section 17-11, dismantled or inoperable motor vehicle. She asked why a vehicle that is inoperable, but has a valid tag, cannot be kept outside of a covered structure for more than 10 days.

Mr. Hill said the first portion of that Section relates to vehicles not in the ownership of the occupant of the property. The intent of the second portion is to prohibit people from running an auto shop out of their home. He read the definition of inoperable vehicle.

Dan Porsi, Code Compliance Division, said that Code Enforcement will give extensions past 10 days. He confirmed that the intent of this section is to keep the shade tree mechanic motivated to complete the repair.

Following a brief discussion, Mrs. Palmer asked if staff would review the definition of inoperable vehicle to determine if language can be added requiring the vehicle to be visibly inoperable or in a state of disrepair.

The maker/seconder amended the motion to include the comments made by the City Attorney. The question was called on the motion and the amendment. Motion carried unanimously.

19. ORDINANCE NO. 2002-61: (First Reading) An ordinance merging the City of Melbourne Individual Police Officers' Retirement Trust Fund with the City of Melbourne Police Officers' Trust Fund.

Mr. Gougelman read the ordinance by title.

Moved by E. Palmer/Poole for approval of Ordinance No. 2002-61. Motion carried unanimously.

20. COUNCIL ACTION RE: Fee proposals for services related to the 2002C Water and Sewer Bonds.

From the agenda report: At the August 13 meeting, Council approved Resolution No. 1774 authorizing the issuance of the Water and Sewer Refunding Revenue Bonds, Series 2002C. The city received fee quotes for consulting services, which will be necessary to complete the sale of the bonds. These services and the fees are described below.

Authorized depositary services: This is for The Bank of New York to maintain the debt service accounts for the bond issues. The Bank of New York has proposed a fee of \$750.

Escrow verification agent services: PFM in its capacity as financial advisor is required to take bids for escrow verification agent services. The verification agent independently verifies that the investments in the escrow account are adequate to pay the interest, principal, and bond premium as the bonds mature or are called. Based on the bids

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received, PFM recommends The Arbitrage Group perform these services at a fee of \$1,495 for the Series 2002C Bonds.

Independent auditing services: It is necessary for the independent auditors to provide a consent letter (consenting to the use of the 2001 Annual Financial Statements in the Official Statements) and to provide certain certificates required for the bond closings. Hoyman, Dobson & Company has proposed fees of \$750 for the 2002C Bonds.

Rate consultant services: It is necessary for the rate consultant to provide projections which are used in the Official Statements, to provide the feasibility report which is an appendix to the Official Statements, and to provide certain certificates required for the bond closings. Burton & Associates has proposed fees of \$5,000 for the 2002C Bonds.

Moved by Poole/Walker for approval of the fee proposals by The Bank of New York, The Arbitrage Group, Hoyman, Dobson & Company, PA, and Burton & Associates for services to support the sale of the 2002C Water and Sewer Bonds. Motion carried unanimously.

Added to the agenda:

- 20.1 COUNCIL ACTION RE: Purchase of 4.5 acres of property on Eber Road, east of Dairy Road, for use as a stormwater retention facility for Eber Road improvements and possible fire station location from the 127th Avenue Associates, Ltd. (Courtelis Company).

Mr. Hill briefed Council. At the July 9 meeting, Council gave conceptual approval for purchase of this property at a cost of \$136,124. Staff worked with the 127th Avenue Associates for the purchase and draft agreement has been finalized. The City Attorney has recommended approval of the purchase agreement between the city and the 127th Avenue Associates, Ltd. in the amount of \$136,250 and authorization for the City Manager and City Attorney to close the transaction.

In response to Mrs. Poole, Mr. Hill confirmed that it would be Council's decision whether or not to sell this property in the future if it is not used for its intended purpose. Additionally, he confirmed that 127th Avenue Associates has indicated that it would prefer that the fire station be located on the west side of the property.

Mr. Palmer asked if the deed will contain a reverter clause. Mr. Hill said no and added that the property will be owned by the city.

Moved by E. Palmer/Hand for approval of the purchase agreement between the city and the 127th Avenue Associates, Ltd. in the amount of \$136,250 and authorization for the City Manager and City Attorney to close the transaction. Motion carried unanimously.

Council convened as the Melbourne Downtown Community Redevelopment Agency for the following item:

21. COUNCIL ACTION RE: Purchase of two Downtown parcels located at 808 and 812 East

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Strawbridge Avenue.

Mr. Hill reviewed the agenda report. After being advised that these two properties might be available to purchase, staff looked into their acquisition. The properties are located adjacent to Code Compliance and could provide additional parking for Downtown or for City Hall. Additionally, they could be used for city offices.

Costs for temporarily holding the property and continuing the leases include the annual debt service, real estate taxes and maintenance costs for the property. The debt service would be approximately \$1,584 per month based on a 20-year loan at 5%. Real estate taxes are currently \$3,632 annually and maintenance costs would be approximately \$1,500 annually. These costs would total \$24,140 annually and could be covered by the annual rental income of \$24,900.

The Downtown Redevelopment Committee considered the purchase at its August 15 meeting. The members felt it was important to acquire the property and leave options open for its future development. Prior efforts by the committee to acquire property in the area for public parking have not been successful because very few properties become available in the core downtown area. The committee recommended the CRA purchase the property at the appraised value utilizing a loan from the General Fund that would be of a term that would allow the current rental income to cover the debt service on the loan.

Mrs. Poole noted that the property being discussed is located next to her property and asked if she needs to declare a conflict of interest. Mr. Gougelman referenced the voting conflict law as it relates to a member of a CRA. He noted that she needs to declare the conflict and the nature, yet she may vote on this issue and participate in discussion. Mrs. Poole declared the conflict. (Memorandum of Voting Conflict Form attached to the original minutes.)

Moved by Walker/Hand to authorize staff to negotiate with the owners and return to Council with a purchase agreement for properties at 808 and 812 E. Strawbridge Avenue.

Mrs. Poole asked if the city would continue to receive lease money until the properties are paid for. Mr. Hill said the intent would be to continue to lease in a manner that does not cost the city to hold the properties.

A brief discussion followed regarding potential future use for the properties. The Mayor recommended Council discuss the details after the City Manager has returned with a purchase agreement.

The question was called. Motion carried unanimously.

At this point, Council made the following motion relative to Item 17:

Moved by E. Palmer/Contreras to confirm funding for co-sponsorship of the Downtown Art and Craft Festival from the Downtown Redevelopment Fund. Motion carried unanimously.

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City Council reconvened for the remaining items.

22. COUNCIL ACTION RE: Board Appointments

- a. Babcock Street Community Redevelopment Agency Advisory Committee - one alternate member

Mrs. Palmer nominated Nancy Dukeman.

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

Moved by Hand/E. Palmer to appoint Nancy Dukeman. Motion carried unanimously.

(Unexpired, two-year term: 8/27/2002 – 6/7/2003)

- b. Citizens' Advisory Board - one regular member

Moved by Walker/E. Palmer to appoint Yvonne Minus as a regular member. Motion carried unanimously. (Unexpired term plus three-year term: 8/27/2002 – 11/11/2005)

Mayor Buckley called for nominations for the alternate member seat (vacant due to the appointment of Yvonne Minus as a regular member).

Mrs. Walker nominated Dale Haynes.

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

Moved by C. Palmer/Walker to appoint Dale Haynes as an alternate member. Motion carried unanimously. (Unexpired three year term: 8/27/2002 – 11/11/2003)

- c. Code Enforcement Board - one regular member

Mrs. Hand nominated Bobby Bowen and Mayor Buckley nominated Thomas Olexa.

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

The roll call vote was:

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

Olexa: Buckley

Appointed: Bobby Bowen (Unexpired term plus three-year term: 8/27/2002 – 10/14/2005)

Mayor Buckley called for nominations for the alternate member seat (vacant due to the appointment of Bobby Bowen as a regular member).

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Mrs. Poole nominated Thomas Olexa.

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

Moved by Poole/E. Palmer to appoint Thomas Olexa as an alternate member. Motion carried unanimously. (Unexpired three-year term: 8/27/2002 – 7/8/2005)

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mayor Buckley reported that Bethany Baptist Church extended an invitation to its ceremony scheduled for September 11 at 7:00 p.m.

The Mayor reported that the Brevard Water Supply Board unanimously agreed to recommend to the Brevard County Commission that no action be taken on the water/sewer district ordinance.

Mrs. Poole referenced the letter submitted by the Community Manager of Lakewood Village describing illegal activity occurring in the area. Mr. Hill said that he has asked the Police Chief to investigate and report.

Attorney Gougelman, at the request of Mrs. Poole, read a letter from Paul Kreft, 626 Moffatt Place, regarding maintenance of sewer lines in Trailer Haven. Mr. Kreft included an invoice with his letter for repair of a sewer line. Mr. Hill said he will ask staff to investigate and report.

24. ADJOURNMENT

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

The meeting adjourned at 10:45 p.m.

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Approved by Council: September 10, 2002 with revision to Item 8, Page 2

Attachment to original minutes: 18th Judicial Circuit Opinion, Item #13
Memorandum of Voting Conflict Form, Item #21