

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
SEPTEMBER 10, 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. Pastor Ralph Nygard, Eau Gallie Baptist Church, 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
	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

Absent: Ed Palmer Council Member, District 2 (ill)

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley read and presented the following proclamations:

Recognizing Assistant Fire Chief Jim Leitz for 30 years of employment with the City of Melbourne.

“Constitution Week” – September 16-22, 2002; accepted by Vice Regent Joan Russ of the Abigail Wright Chamberlin Chapter of the DAR.

Additionally, the Mayor read “Commodore John Barry Day”, which is September 13.

5. APPROVAL OF MINUTES

- August 20, 2002 Special Meeting
- August 27, 2002 Regular Meeting

Mrs. Wysor read the following corrections to the minutes:

August 20 – Page 8, the “aye” portion of the roll call vote revised to delete Council Member Cheryl Palmer (she voted nay) and add Vice Mayor Hand. Mrs. Hand was not listed in the minutes as voting.

August 27 – Page 2, Item 8, Mrs. Poole said she voted nay because fill was brought in from

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off-site and that is not legal.

Moved by Hand/Walker for approval with the corrections. Motion carried unanimously.

At this point, Mayor Buckley announced that a ceremony recognizing the designation of Downtown Melbourne as a Main Street community will occur during the monthly Friday Fest event on September 13 at 7:00 p.m.

Additionally, the Mayor announced that a September 11 ceremony is scheduled at 8:46 a.m. on the front lawn of City Hall. The Mayor will read the "Patriot Day" proclamation issued by the President of the United States and the flag will be lowered to half-staff. Representatives from the Fire and Police Departments will participate.

6. CITY MANAGER'S REPORT

Mr. Hill referenced the information distributed by the Director of Aviation regarding the 12.5-acre parcel occupied by the D. B. Lee Wastewater Treatment Plant. Council previously discussed pursuing a release on that property from the FAA. The Airport Director has provided a sketch of the property along with a description of its intended use by the Airport. This matter will appear on a future City Council agenda.

Mr. Hill noted that the September 17 budget public hearing agenda package will be distributed on Friday. He reported that the city received preliminary notice that we will not be receiving the UHP Grant; therefore, budget changes may be necessary.

Mr. Hill referenced the memorandum, which requests Item 25.1 be added to the agenda.

Immediately after Item 7, Council made the following motion:

Moved by Contreras/C. Palmer to add Item 25.1 to the agenda. Motion carried unanimously.

7. PUBLIC COMMENTS

Eleanor Rank, Highway A1A, Indialantic, reported that many residents water their lawns between 7:00 a.m. and 10:00 a.m. – a period when many people, especially children, are using the sidewalks. She discussed her concerns and said that children dart into the street when approaching a wet sidewalk or sprinkler. She asked the city to consider an advertising or educational campaign that encourages citizens to water their front lawns earlier or later than these hours.

Colleen Cunningham, 2309 South Stone Street, asked the city to reinstate Officer Melvin Byrd. She discussed the time he devotes to the children in the area. Ms. Cunningham presented 735 individual petitions to the city in support of Mr. Byrd's reinstatement.

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UNFINISHED BUSINESS

8. ORDINANCE NO. 2002-59 (CU-2002-08/SP-2002-17): (Public Hearing/Second 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) (First Reading 8/27/2002)

Attorney Gougelman read Ordinance No. 2002-59 by title. There were no comments from the public.

From the agenda report: Following the August 27 Council meeting, staff contacted the School Board and learned that the board does not regulate the location of charter schools. The decision on whether a location is appropriate is up to each charter school's board of directors.

Additionally, staff suggested revising stipulation "h" as follows (which would be in place of the previous one-year limitation language):

*"Private events, not open to the public, are not the subject of this conditional use. The conditional use shall allow serving of alcohol for consumption on premise, on an occasional basis to the public, not to exceed three days in any seven-day period. The conditional use shall relate to specific events and shall not allow for the operation of a bar, cocktail lounge or tavern."*

The revised stipulation has been included in the ordinance in the agenda package.

Moved by Walker/Poole for approval of Ordinance No. 2002-59.

Mrs. Palmer stated that the new condition "h" satisfies the concerns she raised about the possibility of the facility turning into a cocktail lounge or bar.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2002-60: (Second Reading) An ordinance amending Chapter 17, "Junked, Abandoned & Wrecked Property", as recommended by the City Code Review Committee, Section 3. (First Reading 8/27/2002)

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

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From the agenda report: Code Compliance reviewed the definition of “inoperable vehicle” due to a concern raised at the last meeting. Section 17-11 has been revised to include the word “visibly” in the reference to inoperable vehicle.

This change would allow for a vehicle to remain in an uncovered area in excess of 10 days as long as it appeared to be a functional vehicle. Code Compliance personnel would ensure that the vehicle had no missing or deflated tires, all exterior parts in place, no broken or missing windows, and a current vehicle tag displayed.

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

Mrs. Palmer said this change will improve the ordinance; however, a resident should be allowed to keep a their own vehicle in their driveway ~~—with or without a current tag~~ as long as it has a valid tag and insurance.

The question was called. The roll call vote was:

Aye: Contreras, Poole, Walker, Hand and Buckley

Nay: C. Palmer

Motion carried unanimously.

10. ORDINANCE NO. 2002-61: (Second Reading) An ordinance merging the City of Melbourne Individual Police Officers’ Retirement Trust Fund with the City of Melbourne Police Officers’ Trust Fund. (First Reading 8/27/2002)

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

Moved by Walker/Poole for approval of Ordinance No. 2002-61. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. COUNCIL ACTION RE: Purchase and Sale Agreement between the City of Melbourne and Fulcher Realty Investment, Ltd., for purchase of a .9-acre parcel on Lorraine Drive.

From the agenda report: Council gave conceptual approval of the purchase of five lots on Lorraine Drive for use as a stormwater retention facility at the August 13 meeting. The approved cost was \$57,000. This item is for approval of the Purchase and Sale Agreement. Funding will come from the Fiscal Year 2002 Charles Drive Storm Drain Replacement Capital Improvement Project.

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Moved by Hand/Contreras for approval of the Purchase and Sale Agreement between the City of Melbourne and Fulcher Realty Investment, Ltd., for purchase of a .9-acre parcel on Lorraine Drive in the amount of \$57,000. Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Award of contract to Doug Connor, Inc. for construction of stormwater treatment pond on Dove Street - \$104,462.00 and transfer of \$16,602 from the master plan project to this capital project.

Mr. Hill reviewed the agenda report.

Moved by C. Palmer/Hand to award the construction contract to Doug Connor, Inc. in the amount of \$104,462 and transfer \$16,602 in savings from the from the Stormwater Master Plan project to this capital project. Motion carried. Mr. Contreras voted nay.

13. COUNCIL ACTION RE: Award of contract with L. A. Construction Services, Inc., Merritt Island, Florida, for installation of a chlorine scrubber at the chlorine booster station on the Melbourne Causeway at a cost of \$84,700 and transfer of \$36,935 from the Water and Sewer Miscellaneous Projects Fund.

Mr. Hill reviewed the agenda report.

Moved by Hand/Walker to approve the contract with L. A. Construction Services in the amount of \$84,700 and transfer \$36,935 from W/S Miscellaneous Projects Fund to this capital project. Motion carried unanimously.

14. COUNCIL ACTION RE: Consent Agenda

Moved by Hand/Contreras for approval of items 14 “a” through “g” as recommended. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Inspect and upgrade the sprinkler system and fire alarm system at the Melbourne Auditorium, Wiginton Fire Systems, West Melbourne, FL - \$79,651.
- b. Change Order No. 2 to Wharton-Smith Contract for D. B. Lee Wastewater Treatment Plant, Phase III, Project No. 96373 - \$33,756.
- c. Award of Contract for purchase of American Darling B-84-B fire hydrants, Ferguson Waterworks, Orlando Florida at an annual cost not to exceed \$30,840 (40 units at \$771 each).
- d. Purchase of five Sunview™ Mobile Data System Ruggedized in-vehicle Computer, Data911™, Lawrenceville, GA - \$26,197.50.

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- e. 60-Month lease of a Ricoh AP3800CDL Digital Color Printer (\$146/month), and a Ricoh Aficio 350 Digital B/W Copier (at no cost), Kemper Business Systems, Melbourne - \$24,010.
  - f. Award of Contract for purchase of Ford V42-7W (5/8" x 3/4" x7") meter resetters, Sunstate Meter & Supply, Newberry, Florida - \$22,800 (1,000 @ \$22.80/each)
  - g. Purchase of four Prolaster III speed-measuring devices, Kustom Signals, Inc., Lenexa, Kansas - \$16,580.
15. ORDINANCE NO. 2002-62 (CU-2002-14): (Public Hearing/First Reading) A proposed ordinance granting a conditional use to allow an automotive service station and a car wash on a 1.74-acre parcel (a portion of Lot 49, Indian River Groves and Gardens Subdivision), located north of Eau Gallie Boulevard, west of John Rodes Boulevard, and east of I-95. (Owner/Applicant – Eau Gallie Energy, L.L.C.) (Representative – William Duffey, D.F. Consultants, Inc.) (P&Z Board – 8/15/2002)

Attorney Gougelman read the ordinance by title.

Mrs. Braz briefed Council. The applicant is requesting an additional conditional use on a 1.74-acre parcel zoned C-P (Commercial Parkway with a conditional use for an automotive service station) to construct an automatic car wash. The original conditional use and site plan were approved in 1997 (Ordinance No. 97-47). This resulted in the construction of the existing auto service station/convenience store with 51 parking spaces. The original plan included a proposed fast food restaurant that was never developed.

The property has an adopted Commercial land use and is now the site of a convenience store with gasoline pumps located in a C-P zoning district. Automobile service stations and car washes are permitted in the C-P zoning district, but require a conditional use. Commercial zoning surrounds the property.

The car wash site plan consists of a 2,760 square foot drive-through building located in the north central portion of the property. The building complies with setback, height and area (size limitations) of the Zoning Code under the provisions of C-P zoning. No change will occur to the existing buildings and gas pumps. An existing retention basin is provided within the required landscape areas on the north side of the property and will not need to be enlarged to accommodate the car wash. No additional landscaping will be required since the site complies with the landscape requirements in the Code for auto service stations.

With the proposed use, approximately 1,000 gallons per day of water treatment would be required. As with most car washes the facility will use reuse (recycled) water. Trip generation to/from the site would increase negligibly with the car wash addition. Most trips will be pass-by trips already using the site.

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

- a. The conditional use shall be consistent with the one-page site plan for Eau Gallie Energy, LLC, consisting of a one-page plan dated 04/09/2002 with Job Number 02-2619, prepared by D.F. Consultants of Pembroke Pines, Florida.

Any change to the site plan will require reevaluation of the site plan by the Engineering and Planning and Economic Development Departments. Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency and City Council. A substantial change includes but is not limited to: 1) a decrease of 5% or more of open space or vegetative areas on the site; 2) any increase in the number of access points as shown on the site plan; or 3) a 10% or more increase in the building size or any increase in the number of pump islands.

- b. Proposals to use portions of the building or redevelop the remaining portions of the building into one or more of the permitted uses listed in the C-P zoning district must ensure that adequate parking is available or provided to accommodate the proposed use. No occupational or business license will be used for the buildings until it is determined by the city that sufficient parking will be provided.

The conditions have been included in the proposed ordinance.

William Duffey, project engineer, representing the owner, explained the development activity that has occurred on site. He agreed with the stipulations and requested approval of the car wash.

There were no other comments from the audience.

Moved by Walker/C. Palmer for approval of Ordinance No. 2002-62. Motion carried unanimously.

16. ORDINANCE NO. 2002-63 (CU-2002-15): (Public Hearing/First Reading) A proposed ordinance granting a conditional use to allow a building height of greater than 80 feet and site plan approval for a condominium/office/retail building on nine platted lots and portions of two lots consisting of approximately 2.13 acres, located on the north side of New Haven Avenue and the south side of Strawbridge Avenue, east of U.S. 1 (Harbor City Boulevard) (Owner/Applicant – Hynes Properties, L.L.C.) (Representative – David T. Menzel) (P&Z Board – 8/15/2002)

Note: A revised ordinance was distributed to Council, which provides for the repeal of the previously issued conditional use and site plan approval (Ordinance No. 2001-62).

Attorney Gougelman read the revised ordinance by title.

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Mrs. Braz reviewed the agenda report and discussed the history. The former 30-foot wide street (Front Street extension) was vacated in 1907 and platted over the 1947 re-plat. A pedestrian easement was created over a portion of the property. A site plan was approved in the mid 1980's for the portion of the property for a drive-in bank. This was approved at the time the One Harbor Place building was approved. As a condition of meeting parking requirements for the One Harbor Place building, an easement was granted to the owners of One Harbor Place to provide 13 parking spaces on a portion of the subject site. Council previously approved a conditional use for the Causeway Center to permit a building greater than 80 feet in height on January 8, 2002.

All adjacent properties are zoned C-3. The City Code requires a conditional use for all development exceeding 80 feet in height in the C-3 zone. The building setbacks permitted in the C-3 zone are 0 feet; however, parking garages must setback at least five feet.

The drive-in bank and commercial structure were recently demolished. Two dumpsters – one used by the adjacent restaurant and one used by One Harbor Place – are located on the westerly portion of the property. There are several large trees on the property; many are located along the existing bluff line. The Environmental Impact Assessment (EIA) Study was provided with the original application. The applicant proposes to remove many of the trees on site including oaks and palms. The easterly portion of the property lies within an aquifer recharge area and within a designated flood hazard area (Flood Zone AE with a base flood elevation of five feet). No leaseable area of the site would be located in a special flood hazard area. Adjacent properties would not be adversely affected since Code required retention would be provided on site under the garage structure to the westerly portion of the site and under the garage of the condominiums.

The trysting steps are currently located in the center of the parcel. The original Council approval vacated the steps with specific conditions. These conditions should be applied to any revised plan, and a new agreement would need to be reached. The walkway will be re-created along the east side of the property.

The new plan consists of a nine-story office/retail building, a 10-story 56-unit condominium building, and an eight-story or nine level (top deck will be open air) parking garage. Building height is measured from the highest grade or street elevation. This varies depending on where the grade is measured due to the area topography. The plan indicates various base grades surrounding the proposed building. The building height is measured from ground to the highest point on the building top of the boardroom/pavilion, which measures 105.2 feet from New Haven Avenue and 93.2 feet from Strawbridge Avenue. The Code allows elevator shafts and other portions of buildings not for occupancy to be exempt from the height standard.

The site plan depicts the layout of the footprint of the proposed building, parking areas, driveways and yard and includes a schematic drawing showing the south and north elevations of the site. The gross leaseable area on the office/retail building will total

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98,000 square feet. The site will incorporate the historical trysting steps/bluff walk into the design of the building. Non-Code complying steps will be replaced with Code complying steps that will provide a walkway from the New Haven street level to the alley extending from Strawbridge Avenue, along the east side of the site via a sidewalk along the north side of New Haven Avenue, and along the south side of Strawbridge Avenue. An historic bluff walk monument will be erected along the east side of the site and trees on the property will be relocated/planted along both sides of the new walkway along the east and north sides of the condominium building.

Parking for the building will be provided in a garage/surface lot combination, which will consist of portions of the first two floors of the nine-story office/retail building, the lower three floors of the condominium building and a larger garage attached to the office/retail building. A total of 430 spaces will be provided on site including 112 spaces for the 56 condominium units. All residential parking will be in the residential building garage. Access to the garages will be provided to the lower tier of parking from two driveway cuts onto New Haven Avenue and to/from the upper tier from a driveway connection to Strawbridge Avenue, and to an alley that connects to Strawbridge Avenue. The garage, as proposed, would extend over the alleyway above the second story. The height of the garage ramp over the alley will be designed to ensure that a garbage truck or other similar delivery truck could access the alley and the properties now served by the alley to the southwest.

The mixed-use development will generate an estimated 1,818 daily trips to/from the site with 286 occurring during the peak p.m. hours. (During the presentation, Mrs. Braz clarified that the daily trips will actually be slightly less than 1,818.) These would be assigned to Strawbridge Avenue and New Haven Avenue. Both streets have sufficient capacity to accommodate the vehicle loadings and will continue to operate at an acceptable level of service compliant with the Comprehensive Plan. The development will require an estimated 29,188 gallons per day of water and sewerage treatment capacity. The city has sufficient capacity to serve this development and all other previously approved developments.

The Planning and Zoning Board added a stipulation that requires a new license and easement agreement in a form acceptable to the city. The Downtown Architectural Review Board unanimously approved the plan at its August 21 meeting.

The Planning and Zoning Board recommended approval of CU-2002-15 with the findings included in the agenda package and the following conditions:

- a. The habitable building height shall be limited to 105.2 feet measured from proposed building grade at New Haven Avenue and 93.2 feet measured from the proposed building grade on Strawbridge Avenue.
- b. The conditional use for height shall be consistent with the site plan for Causeway Center Building consisting of a seven-sheet plan prepared by MAI Architects

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Engineers Construction of Melbourne, Florida, with Project Number 02-152, dated July 15, 2002, and with a signed, sealed, and stamped date of August 8, 2002.

Any change to the site plan will require re-evaluation of the site plan by the Planning and Economic Development and Engineering Departments. Any substantial change shall require the review and approval of 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 more than five percent in the amount of open space or vegetative areas on site; 2) a significant change in the location of vehicle access points; 3) an increase in the building height above the height approved as part of this conditional use approval; or 4) a change in the location, provision for, landscaping, designation of a historical marker for the trysting steps as shown on the plans.

- c. The use and plan approval is subject to submittal of a recent title opinion with copies of the complete report with referenced attachments provided to the Planning and Economic Development Department and, if necessary, vacation of public and private easements or other encumbrances necessary to develop the site. As a condition of meeting this standard, the applicant must successfully obtain air rights above the 12-foot wide alley located between Lot 13 and Lots 17 and 18 in order to construct the garage or obtain approval by the city to abandon and vacate the alley.
- d. The restaurant shall be limited to 125 seats, Monday through Friday between 8:00 a.m. and 5:30 p.m., unless additional parking is provided.
- e. The applicant shall relocate trees, if deemed suitable and acceptable by the Code Enforcement Officer, to another suitable and acceptable private site or to a suitable public site in the city.
- f. The applicant shall provide street lighting consistent with the new Downtown lighting along New Haven Avenue and Strawbridge Avenue frontage.
- g. The applicant shall participate with the city and FDOT to landscape the right-of-way adjacent to the site between the property line and the edge of pavement.
- h. Provide a new License and Easement Agreement in a form acceptable to the City Manager and City Attorney addressing vacation of the easement for the “Trysting Steps”, the public parking in the garage and access to the viewing area on the top of the commercial building.

The conditions have been included in the proposed ordinance.

Mrs. Braz noted that the applicant could have this same intensity without the conditional use. The building could be built (at an 80' height) as a “box.” She said the issue is whether it is appropriate to allow the applicant to extend the height an extra 13 – 14 feet.

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Mrs. Hand asked who would be responsible for installation of a traffic signal. Mrs. Braz said if warrants are met, a traffic signal would have to be installed. However, it is not anticipated that warrants will be met.

Mrs. Poole asked Mrs. Braz to elaborate on her comment about the applicant being allowed to build a “box” without this conditional use. Mrs. Braz said if the applicant stayed within the 80’, the same number of square feet could be achieved on this site.

Council made the following disclosures: Mr. Contreras said he met with Dr. and Mrs. Hynes and Mr. Menzel on July 22. They discussed the subject plan. Mrs. Poole stated that she met with Mr. Menzel and Mrs. Hynes about a month ago. She said she was shown plans at that time; however, since then the plans have changed. She added that she spoke with Bob Brown last Friday and they discussed his experience before the Planning and Zoning Board. Mrs. Walker said she attended a meeting with Mr. Menzel and viewed the site plan. Mrs. Palmer said she missed her scheduled appointment with Mr. Menzel. Mrs. Hand reported that she met with Mr. Menzel and reviewed the plan. Mayor Buckley stated that he met with Mr. Menzel and Mrs. Hynes about three weeks ago. He was shown the site plan and building layout.

Attorney Gougelman referenced the change to the ordinance regarding the previous conditional use and site plan. He explained that the revision to the ordinance would provide for the repeal of the previous conditional use and site plan only if this ordinance/conditional use is adopted. The submittal of the new plan does not negate the existing conditional use (unless the ordinance on the agenda is adopted).

Dave Menzel displayed renderings of the site. He discussed the changes that have been made and noted that Dr. Hynes has purchased additional property. As a result, the new plan was developed. He discussed the turning movements with the new plan and said the acquisition of property has allowed the office building to be enlarged. He noted the need for additional medical space. Mr. Menzel elaborated on the facilities that will be located on each floor.

Regarding the One Harbor Place easement, Mr. Menzel said that easement still exists on the ground level of the building. Continuing, he noted that Strawbridge Avenue can be accessed from New Haven Avenue with the new plan. He noted the importance of this as it relates to access.

Mr. Menzel reported that the bluff walk almost matches the same elevations. The only difference is that the sidewalk will be handicapped accessible. He added that the Planning and Zoning Board recommended that the alley be vacated. He pointed out that they have filed an abandon and vacate request. They would like to create a pedestrian walkway with enough height to allow access by garbage trucks, fire trucks, etc.

Mr. Menzel said that more parking is available now with 300 parking spaces. The observatory can be accessed by driving to the top of the parking garage. He commented

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that the new design provides for a curved building, which is striking and within the intent of C-3 zoning; the concept of the rectangular building is gone.

Mrs. Palmer asked what type of surgery will be accommodated in the 15,000 s.f. surgery area. Mr. Menzel said the original surgery center was for a spine center and they now have interest from an eye care facility that wishes to expand. The idea is to have an optimal surgery area with shared common areas. A state of the art MRI facility will be located on the first level.

Mrs. Palmer asked the beginning price for the condominiums. Mr. Menzel said they will each be 2,000 s.f. – 4,000 s.f. and will range from \$150 - \$200 per s.f.

Mayor Buckley referenced stipulation “d” regarding the restaurant and Mr. Menzel said he understands and agrees with that condition.

In response to Mrs. Walker, Dr. Hynes elaborated on the type of surgery that will take place in the new facility and the equipment that will be used.

Kimberly Bonder Rezanka, attorney representing Bob Brown, proprietor of Nannie Lee’s Strawberry Mansion and Spanish Trace, Inc., stated that there are a number of problems with the conditional use and site plan. She elaborated as follows:

There have been inadequate submissions to the city; the parking calculations are severely insufficient and a professional engineer will testify to that; a proper Environmental Impact Assessment has not been submitted; the applicant is relying on the previously submitted EIA, which was done on May 2, 2000; the EIA was not performed by an engineer with the proper credentials and does not include all the items necessary under (Appendix D), Section 9.63(b); the EIA does not include soil types, wetlands, recharge areas and wildlife; the EIA does not include Lots 12 and 13 and does not adequately define the stormwater retention and storm drainage system as required by the city’s ordinances.

There was an inadequate procedural process followed at the Planning and Zoning Board meeting; there were inadequate findings by the board; the P&Z Board took the recommendations from staff and did not consider the substantial and competent evidence presented and testimony by individuals; there was no discussion nor anything in the public record about whether this development is harmonious; there was no discussion about ingress and egress relative to automobile and pedestrian safety; the trip generation report indicating 1,800 trips is severely inadequate; there is no concurrency report in the Planning and Zoning file; there was evidence and testimony given that traffic problems exist in this area; and one resident stated that this is a dangerous intersection.

Ms. Rezanka said she personally left a job on Strawbridge Avenue because she will not travel in this area during workdays; there has been no traffic flow analysis; there has been no consideration of the 250-seat restaurant or drive-through coffee shop with regard

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to traffic; there has been no discussion of where the cars will back up when they go through the drive-through or coffee shop.

Continuing, Ms. Rezanka said there has been no discussion on the impact of resources; there was inadequate notice of the public hearing before the Planning and Zoning Board; the legal description was not properly published; and Mr. Brown will testify to the treatment he received at the P&Z hearing.

There is still an unresolved issue with the trysting steps agreement; the trip generation report in the Planning and Zoning file is based on a 74,000 s.f. structure – not a 98,000 s.f. structure; the trip report does not include the 715 trips generated for the restaurant; if Mr. McCord's (Planning and Zoning Administrator) numbers are applied to a 98,000 s.f. structure, the trip generation increases to 3,506 trips per day; if the restaurant is included in the report, the trips increase to 4,221, not including the drive-through coffee shop; and if the office space becomes medical office the total trips, including the restaurant but not the coffee shop, will be almost 5,000 per day.

Ms. Rezanka said that she does not believe that the configuration and elevations of the parking garage are adequate or up to Code; the alleyway is necessary to her client – he uses it for service and deliveries; the P&Z Board did not recommend vacating the alley, rather the board said if necessary the applicant would need to look into vacating; there are issues regarding after hours public access to the parking garage; if someone is injured in the garage she questioned who would be liable and if the city would indemnify Dr. Hynes.

Ms. Rezanka stated that traffic and safety issues have not been properly reviewed; a traffic accident analysis was obtained from the Melbourne Police Department for the U. S. 1/192, U. S. 1/New Haven Avenue, and 192/New Haven Avenue area for the past five years, which indicates over 111 accidents.

Ms. Rezanka concluded by saying she is not positive that a condominium is properly zoned in this area under C-3 zoning; there is no definition in the City Code for a condominium. She added that she believes the P&Z Board took the findings (of staff) and basically rubber-stamped the plan. The board did not consider what the people in the area believe will happen to their property values and to their safety. She asked the City Council to deny the conditional use and site plan.

Luke Miorelli, ME Construction, professional engineer, representing Bob Brown, stated his concerns as follows: this is an enlarged version of the previous plan and the same problems persist; the building is a medical building and therefore should have one parking space per 175 s.f.; the calculations on the site plan indicate that 421 spaces are provided – 112 for the condominiums, 42 for the restaurant, and 275 for the medical area; if the City of Melbourne requirements are used along with the definitions on the site plan as to what is medical and what is office, the site ends up 116 spaces short. The office is treated at 1:300, the MRI area at 1:175, the surgery area at 1:175, and the boardroom at 1:300. If the entire building is calculated as medical and those calculations are used, the

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project, including condominiums, will require 603 parking spaces. That results in 174 spaces short.

Continuing, Mr. Miorelli said the site plan notes that the surgery center requires 1:600 s.f.; however, there is nothing in the Melbourne Code that references surgery center. The Code indicates that medical is 1:175; the Code requires that if an exact match is not available, then the closest match will be required; the previous site plan provided 1:480 s.f. Mr. Miorelli said he got the feeling when reviewing the plan that the applicant determined how many spaces would fit on the site and then he worked backwards to arrive at the figure.

Mr. Miorelli discussed his experience with the City of Melbourne in developing parking for another large medical facility in Melbourne. He noted that the other facility has 52% more parking spaces than the parking being provided for this plan. He stated that parking is a major issue; there is insufficient parking and it will impact all other businesses in the neighborhood. He concluded the parking discussion by pointing out that the 13 spaces for One Harbor Place have not been designated on the plan.

Mr. Miorelli reported that he spoke with a representative of DOT who indicated that DOT had five pages of comments on the previous site plan; there will be problems with drainage; FDOT is going to require drainage for a 100-year storm; an excessively large stormwater retention area will be required and if that is constructed under the building, he said there will be a septic condition, which will cause foul odors.

Continuing, Mr. Miorelli said the legal survey submitted does not include the description of the two new lots; the parking garage ramp from New Haven level to the Strawbridge level will be sloped in excess of 18%; the maximum recommended slope from the Precast Concrete Institute Manual is 8%; the slope will be steep and the equivalent of driving up onto the upper level of a car carrier; the ramp exiting onto Strawbridge Avenue is at a 15% slope, which will cause safety problems; the internal ramps inside the parking garage should be about 120' long, but are more in the 70' range; the internal circulation problems are going to have a safety consideration on the design. He concluded by saying the parking that had been resolved under the last plan has resurfaced in a new configuration and the new plan will tax the area.

Bob Brown, founder of Strawberry Mansion and President of Spanish Trace, Inc., noted that Spanish Trace consists of small apartments that will be dwarfed to the west of the parking garage for the subject development on Strawbridge Avenue. He discussed his concerns about the proposed development as follows:

His two companies will be adversely affected by this project; the scale, scope and testimony regarding traffic flow show that the development is not harmonious to the area; the increase in traffic mentioned by Mr. Miorelli will be problematic; it is common to take five minutes to turn left out of the Strawberry Mansion parking lot; there are concerns for the pedestrians that visit his restaurant; the impact on his business during construction

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will be horrendous; the proposed structure will be built within 12 – 15' of his business; due to phasing construction could take three – four years.

Regarding the alleyway, Mr. Brown noted that it has been platted since the 1890's and used by the residents for years; the Strawberry Mansion and apartments use the alley daily; his deliveries are via the back alley; if the alley is abandoned and vacated, he will not have access to the rear of his property. He discussed the agreement he has with One Harbor Place regarding placement of the dumpster and said the dumpster issue is a moot point; reduced lighting is a concern; if the new structure is built he will not have sunlight until afternoon.

Mr. Brown said the project will reduce convenience for his patrons and have a horrendous impact on the area; the development is too much for this property and does not deserve to be built in historical Downtown Melbourne; the development is not compatible.

Regarding the Planning and Zoning Board meeting, Mr. Brown said he has never been treated so rudely; he was abruptly cut off. The chairman told him that he had had enough to say and the public hearing was closed in his face. He noted that he was simply trying to ascertain if the board had done its homework and if the members had all information in their package.

David Larkin, 1900 South Hickory Street, representing One Harbor Place, which is the owner of the 13-parking space easement on the Hynes property, said the parking matter is in dispute and back before the court. He asked Council to provide the condition from the previous ordinance (Ordinance No. 2001-62, condition "f") in the new ordinance.

Mr. Menzel responded to the concerns raised during the public hearing as follows: the parking for this development is based on the diversity of uses; he would not design a building of this size with inadequate parking; he has designed two parking garages and although he does not know the exact slope for the proposed development, he would not design a parking garage that can't be accessed; post-development drainage may not exceed pre-development drainage on the site; the fact that this whole area floods has been taken into account; he is not going to design a \$10 million condominium with a cesspool located in the bottom of the building.

Mr. Menzel said he has a 1.8-acre site in Cocoa Beach where he designed a complete underground tank for water retention and it works fine. Regarding the legal description discrepancy, he said the (additional) surveys were sent under separate cover. Regarding the alley, he said Mr. Brown did not mention that he (Mr. Brown) vacated the other end; there is alternative access available to the Strawberry Mansion, so access won't be cut off; this is a preliminary site plan and they are asking for 13' in height; changes in ingress/egress were made to the plan to address DOT comments. He stressed that the details with the design will be worked out. He added that the plan works and he is comfortable with it.

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In response to Mrs. Poole, Mr. Menzel assured her that the plan being displayed is the plan that Mrs. Poole saw when they met. The two properties that were purchased were on the plan viewed by Mrs. Poole.

Mrs. Hand expressed concern that the trysting steps won't be replaced by stair steps. Mr. Menzel said they will be replaced with a five-foot sidewalk that will be handicapped accessible. He noted that this issue is not critical and they would be happy to provide stairs.

In response to Mrs. Poole, Mr. Menzel elaborated on the Strawbridge Avenue ingress/egress.

Gary Frese, representing Dr. Hynes, said he understands the latest revision made to the ordinance (referenced at the beginning of the presentation). Regarding the condition from the previous ordinance referenced by Mr. Larkin, he said they do not object to including that in the proposed ordinance. Mr. Frese stated that a condominium does fit into this zoning category. Within multi-family, state law allows a condominium. He noted that if Council approves this ordinance, the pending litigation by Bob Brown against the city will be moot. He concluded that in keeping with the last plan, the variance of 13.2 feet is the same.

Mrs. Poole said it is a little higher. Mr. Menzel elaborated and discussed the different elevations and calculations.

Attorney Gougelman referenced the traffic accident analysis submitted by Ms. Rezanka. He said it looks as if the report contains data for South Harbor City Boulevard, East New Haven Avenue, and South Babcock Street. He asked her to clarify the point of the report. Ms. Rezanka said they had requested data from the Police Department for the general intersection areas of New Haven Avenue. She said there are probably 20 on the report that would not be applicable. Attorney Gougelman asked Ms. Rezanka if she is a traffic engineer and Ms. Rezanka responded no.

Attorney Gougelman said concerns were raised about inadequate Planning and Zoning Board findings and no discussion about ingress/egress, etc. He asked if there are expert witnesses to elaborate on that point. Ms. Rezanka said no and added they believe lay people can provide substantial evidence. Mr. Gougelman asked if she has witnesses to present and Ms. Rezanka replied that some evidence was presented at the P&Z Board meeting. She added that she and Mr. Brown testified that this is a dangerous area.

That concluded the comments from the public.

Moved by Contreras/Hand for approval of Ordinance No. 2002-63.

Mrs. Poole referenced the May 14, 2002 City Council meeting minutes (Item 9) where the applicant proposed a five-foot easement on the west side of the property, which would

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give 24-hour access from New Haven Avenue. She read the comments that were made at that meeting by the applicant and Council Members.

Mrs. Poole said there is now a new plan and new conditional use request. After all the concern expressed about preservation of trees on the bluff walk, the applicant is proposing to remove/relocate 23 trees. Survival is questionable for many of the 200-year old oak trees on the site. Mrs. Poole listed the sizes of many of the trees and said the property will practically be stripped bare.

Continuing, Mrs. Poole referenced the concerns that have been raised about the lack of parking. Additionally, she said the development will add 1,818 daily trips on the causeway, which already backs up during peak times. She asked who would believe the finding made by the P&Z Board, which states that the conditional use will not adversely increase the permitted intensity of this property or the Downtown area or adversely increase traffic conditions on area roadways.

Mrs. Poole discussed the historical buildings in the area and asked how the proposed buildings will match the character of the area. She referenced the two historical homes that were purchased for demolition. Additionally, she stated that the alley is used by garbage and delivery trucks and employees of the Strawberry Mansion.

Regarding the parking concerns raised, Mrs. Poole said it appears that the development is 30 spaces short based on the P&Z file. She asked where these spaces will be provided and asked if the spaces along New Haven Avenue, which are used by existing businesses, will be used by this development.

Mrs. Poole referenced the intent of Downtown Redevelopment, which includes the reduction of automobile traffic. She noted that the proposed buildings depend entirely on automobile access. Eighty-nine percent of the site is impervious area covered with buildings and pavement. The small amount of landscaping is on FDOT property. She concluded by saying this is the fourth plan and it is not compatible with the Downtown Redevelopment Area. This is simply the beginning of high-rise development along the Indian River Lagoon. She recommended Council have the courage to send this plan back to the drawing board.

Mayor Buckley said 80' buildings are currently allowed in the C-3 zone. A building could be constructed that would block Bob Brown's (sunlight) and this development will only be an additional 13' of height. He added that he believes this is a much more attractive arrangement than before and he is in favor of the new plan.

Mrs. Hand asked if stair steps and the handicapped accessible walkway can be provided. Mr. Menzel said sure.

Mrs. Poole pointed out that the applicant broke his promise about what would happen on the west side. This plan is nothing like what they said they were going to do. Mayor Buckley commented that he believes this is more attractive.

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Mrs. Walker said in her opinion, there is a lot of confusion. There has been conflicting information from witnesses and experts. She added that she wants time to digest what she has heard before she can vote. She noted that she doesn't feel there is enough factual information available to thoroughly evaluate the request and she would like to postpone the item.

Mrs. Hand stated that the medical center/spine center will be a great asset to our community; it will be a regional facility.

Mrs. Palmer said if she had her druthers, the building would be visibly more compatible with historical Downtown Melbourne. However, she said she likes to see state of the art medical facilities in Melbourne; they are needed, particularly with our retirement oriented community. Mrs. Palmer said in her opinion the condominiums will house people who will make a substantial investment in the area. The residents will likely walk Downtown and frequent the restaurants and shops. Although the structure does not look historical, it will be an absolute improvement over what exists on the site now. Regarding the dispute about the walkway, she said the new design appears to be better for the walking public.

A brief discussion followed.

The question was called. The roll call vote was:

Aye: Contreras, C. Palmer, Hand and Buckley

Nay: Poole and Walker

Motion carried.

Attorney Gougelman reported that second reading will be delayed for two meetings so that the easement and license agreement can be prepared and presented at the time of second reading.

Mayor Buckley asked that the ordinance be revised to include the condition about the 13 parking spaces for One Harbor Place.

Mrs. Palmer asked staff to report at second reading if the Strawberry Mansion would still have access to the rear of the property if the alleyway is abandoned and vacated.

Recessed: 10:14 p.m.  
Reconvened: 10:25 p.m.

17. COUNCIL ACTION RE: Request by Harris Sanitation, Inc. for an increase in solid waste collection rates.

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a. Ordinance No. 2002-64: (First Reading) A proposed ordinance amending Chapter 14 of the Code of Ordinances entitled “Garbage and Refuse,” providing rates for the collection of garbage and trash.

b. Proposed contract Modification Agreement with Harris Sanitation, Inc.

Attorney Gougelman read the ordinance by title. Mr. Hill reviewed the agenda report. Additionally, he referenced the revised ordinance distributed, which corrects typographical errors.

Moved by Poole/Hand for approval of Ordinance No. 2002-64 and the contract modification agreement with Harris Sanitation, Inc. Motion carried unanimously.

18. RESOLUTION NO. 1778: (Public Hearing) A resolution to adopt an annual stormwater utility budget for the fiscal year beginning October 1, 2002.

Attorney Gougelman read Resolution No. 1778 by title. Mr. Hill reviewed the agenda report.

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

Moved by Hand/Contreras for approval of Resolution No. 1778. Motion carried unanimously.

19. RESOLUTION NO. 1779: A resolution certifying the Stormwater Utility Assessment Roll.

Mr. Gougelman read the resolution by title. Mr. Hill reviewed the report.

Moved by Poole/Walker for approval of Resolution No. 1779. Motion carried unanimously.

20. COUNCIL ACTION RE: Purchase Assistance Program – Homebuyer Education/ Housing Counseling Program and proposed award of 2001-2002, 2002-2003, and 2003-2004 SHIP Funds to Community Housing Initiative, Inc.

Mr. Hill reviewed the agenda report.

Moved by Contreras/Hand for approval of an award to Community Housing Initiative, Inc. of \$510,000 in FY 2001-2002, 2002-2003, and 2003-2004 SHIP funds for the administration of the Purchase Assistance Program. Motion carried unanimously.

Moved by Hand/Walker for approval of an award for Community Housing Initiative Inc, of \$21,000 in FY 2001-2002, 2002-2003, and 2003-2004 SHIP funds for the administration of the Homebuyer Education/Housing Counseling Program to be administered in conjunction with the Purchase Assistance Program. Motion carried unanimously.

Moved by Walker/Hand to authorize the City Manager to execute the agreement. Motion carried unanimously.

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21. COUNCIL ACTION RE: Budget adjustment to increase funding for the SHIP Homeowner Housing Replacement Assistance Program.

Mr. Hill briefed Council and reviewed the agenda report.

Moved by Hand/Contreras for approval of the proposed budget adjustment to provide an additional \$45,000 in funding to the SHIP Homeowner Housing Replacement Assistance Program. Motion carried unanimously.

22. COUNCIL ACTION RE: Presentation of the proposed Carver Park Master Site Plan by Rochelle Lawandales, AICP, Lawandales Planning Affiliates and request for Council approval of the Carver Park Master Site Plan.

From the agenda report: Creation of a master site plan for Carver Park with resident participation in the planning process was a benchmark for FY 2001-2002 cited in the Booker T. Washington Neighborhood Revitalization Strategy. The BTW Neighborhood Revitalization Strategy, a neighborhood-driven planning document, was approved by Council on April 10, 2001 as an amendment to the city's 2000-2005 Consolidated Plan. HUD approved it on May 17, 2001. Annual Grantee Performance Reports to HUD must now reflect City progress on meeting the benchmarks of the Strategy.

The proposed Carver Park Master Site Plan, funded by the Community Development Block Grant (CDBG), was developed over a period of several weeks and involved a series of meetings with residents of the Booker T. Washington Neighborhood and the Sunwood Subdivision, and various user groups. Staff from the Engineering, Leisure Services, and Housing and Community Development Departments were also involved in the process.

Rochelle Lawandales presented and discussed the Carver Park Master Plan. She responded to general questions about the plan.

Moved by Hand/Contreras for approval of the Carver Park Master Site Plan. Motion carried. Mrs. Poole voted nay.

23. COUNCIL ACTION RE: Acquisition of vacant property located west of Carver Park for future expansion of parking facilities.

From the agenda report: The proposed Master Site Plan for Carver Park establishes acquisition of vacant land immediately west of Carver Park as critical to meeting the need for additional parking facilities at this city park.

The area identified in the plan consists of eight vacant lots totaling 1.67 acres. The Booker T. Washington Neighborhood Association is in full support of the improvements contemplated in the Carver Park Master Plan and residents and property owners in the Sunwood Park Subdivision have expressed no objections to the plan.

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Funds for the acquisition could be drawn from the Booker T. Washington Neighborhood Revitalization account. The use of CDBG funds for acquisition triggers all of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 known as URA.

Moved by Contreras/Walker to authorize staff to pursue acquisition of the parcel and return to Council with an acceptable contract for approval.

Mrs. Poole asked the purpose of the property. Mr. Hill said as shown in the plan, it would be to develop parking for the park. He added that parking is needed now regardless of the proposed gymnasium addition.

The question was called. Motion carried unanimously.

24. RESOLUTION NO. 1780: Third quarter budget review.

Attorney Gougelman read the resolution by title. Mr. Hill reviewed the third quarter budget report.

Moved by Poole/Hand for approval of Resolution No. 1780. Motion carried unanimously.

25. COUNCIL ACTION RE: Request by Council Members Ed Palmer and Poole to attend the 42<sup>nd</sup> Annual Legislative Conference, November 14-15, 2002, Orlando, FL.

Mayor Buckley asked to be included in the travel authorization. Because the conference is located in Orlando, he said he would not stay overnight. Mrs. Poole indicated that she and Mr. Palmer serve on FLC committees.

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

Added to the agenda:

25.1 COUNCIL ACTION RE: Purchase and Sale Agreement between the City of Melbourne and Greg Hartleb for property located at 1803 Pine Street.

For information: The property was determined to be surplus property. It was originally obtained in 1997 as a result of a Code Enforcement violation, which matured into a lien in favor of the city. The property was publicly offered and the sale price represents the best offer received on this property. The sale price is \$3,000 and the buyer will pay the documentary stamp tax (approximately \$210) and recording fees. No title insurance will be furnished due to the small sale price.

Moved by Poole/C. Palmer for approval of the Purchase and Sale Agreement between the City of Melbourne and Greg Hartleb for 1803 Pine Street in the amount of \$3,000 and

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authorization for the City Manager and City Attorney to close the transaction. Motion carried unanimously.

26. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

27. ADJOURNMENT

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

The meeting adjourned at 11:04 p.m.

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City Clerk – 9/20/2002

Approved by Council: September 24, 2002 with correction to Item 9, Page 4