

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
SEPTEMBER 24, 2002

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

1. Council Member Grace Walker gave the invocation.
2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
3. Roll Call.

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

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley read and presented the following proclamations:

“Puerto Rican Heritage Month” – November 2002; accepted by Sam Lopez and Wilfredo Villegas.

“Fire Prevention Week” – October 6 – 12, 2002; accepted by City Manager Henry Hill.

Additionally, the Mayor presented a Beautification Award to Lucy Renato on behalf of Renato’s Bakery & Deli, 2161 Aurora Road.

5. APPROVAL OF MINUTES – September 3, 2002 Special Meeting and September 10, 2002 Regular Meeting

Moved by Walker/Hand for approval.

Mrs. Palmer asked for the following revision to the September 10 minutes, Item 9, Page 4, fourth paragraph: “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.”

Moved by Walker/Hand to amend the motion by adding the correction. Motion carried unanimously.

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The question was called on the main motion, as amended. Motion carried unanimously.

6. CITY MANAGER'S REPORT

Mayor Buckley referenced the memoranda requesting two items be added to the agenda.

Moved by Hand/C. Palmer to add Items 26.1 and 26.2 to the agenda. Motion carried unanimously.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2002-62 (CU-2002-14): (Public Hearing/Second Reading) An 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.) (First Reading 9/10/2002)

Attorney Gougelman read Ordinance No. 2002-62 by title. There were no comments from the public.

Moved by E. Palmer/Poole for approval of Ordinance No. 2002-62. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2002-64: (Public Hearing/Second Reading) An ordinance amending Chapter 14 of the Code of Ordinances entitled "Garbage and Refuse," providing rates for the collection of garbage and trash. (First Reading 9/10/2002)

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

Moved by Walker/Hand for approval of Ordinance No. 2002-64. The roll call vote was:

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

Nay: None

Motion carried unanimously.

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NEW BUSINESS

10. COUNCIL ACTION RE: Lift Station No. 15 Replacement, Project No. 00320, Jobear/Warden Construction, Inc., Palm Bay, FL, total award \$430,000 (Contract Award of \$518,000, minus Change Order No. 1 of \$88,000).

Mr. Hill reviewed the agenda report.

Moved by C. Palmer/Contreras for approval of the contract with Jobear/Warden Construction in the amount of \$518,000 contingent upon approval of Change Order No. 1. Motion carried unanimously.

Moved by Hand/Poole for approval of Change Order No. 1 to reduce the contract by \$88,000 to \$430,000. Motion carried unanimously.

Moved by E. Palmer/Walker for transfer of \$320,115 from the Water and Sewer miscellaneous projects fund to this capital project. Motion carried unanimously.

11. COUNCIL ACTION RE: Garfield Street Detention Ponds, Project No. 00901, L.A. Construction Services, Inc., Merritt Island, FL, \$106,778.

Mr. Hill reviewed the agenda report.

Moved by Poole/E. Palmer for approval of the construction contract with L.A. Construction Services, Inc. in the amount of \$106,778 and the transfer of \$117,456 to this capital project budget from the NDP (Neighborhood Development Program) Park Project. Motion carried unanimously.

12. COUNCIL ACTION RE: Consent Agenda

Moved by E. Palmer/Hand for approval of consent agenda items “a” through “i” as recommended.

Mrs. Poole discussed Item “i” and her desire to have all the firms make a presentation before City Council. She questioned how the projects outlined in the plan are going to be funded. By consensus, Council decided not to have all the firms appear before Council. Following a brief discussion, Mr. Hill said he will schedule Kimley Horn to make a presentation to Council.

Mrs. Palmer referenced Item “b” and asked if it is CH2MHill’s responsibility to supervise the contract in such a way that it is completed on time. Mr. Ralls noted that the consultant does not have control over the contractor; they can’t physically force the contractor to do certain things. The city’s legal recourse is through liquidated damages, which will amount to several hundred thousand dollars.

The question was called. Motion carried. Mrs. Poole voted nay because of Item “i.”

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The consent agenda was approved as follows:

- a. Continuance of Data Processing continuing maintenance and support services, Tier Technologies, Inc., Detroit, MI, \$82,450.
  - b. Amendment No. 4 to Task Order No. 2 of CH2M Hill's Contract for Services During Construction of the Water Treatment Plant, Project No. C97371, at a cost not to exceed \$36,000.
  - c. Contract to complete cleaning and restoration of 16,150± linear feet of pipe (Sewage Force Mains SNAPS Agreement #9911829-3), Professional Piping Services, Inc., Zephyrhills, Florida, \$28,201.
  - d. Supplement No. 123 to Continuing Consultant Contract for NDP Stormwater Improvements, Project No. 02903, \$27,000.
  - e. Task Order No. 3 to Hazen and Sawyer Contract for Wickham Road Ground Storage Tank and Booster Pump Station Evaluation Study, Project #C01302, \$14,850.
  - f. Amendment No. 3 to Outlaw & Jones' contract for Eber Road Widening, Project No. 01608, \$6,000.
  - g. Change Order No. 2 to Cimbra International Corporation for French Drain Improvements Post Road Cascades Subdivision (Chelan Drive and Montreaux Avenue), Project No. 01903, \$5,525.
  - h. Right-of-way Use Agreement for subdivision sign and landscaping on Lansing Street.
  - i. Consultant selection for Eau Gallie Riverwalk and Master Development Plan.
13. COUNCIL ACTION RE: Contract with Hoyman, Dobson & Company to perform Annual Independent Audit Services for the years ending September 30, 2002, 2003, 2004.

Mr. Hill reviewed the agenda report. Hoyman, Dobson & Company is proposing fees of \$74,000, \$85,500, and \$81,500 per year for each of the audits. The total fee proposed for three years is \$241,000. This is a reduction of \$6,800 from the draft proposal submitted by the firm at the time of their presentation to Council and compares to the previous total contract fee for the prior three years of \$209,100.

Moved by Poole/Hand for approval of the contract with Hoyman, Dobson & Company to perform annual independent audit services at a fee of \$74,000, \$85,500, and \$81,500 per year, including out-of-pocket expenses, for audits of the financial statements for the years ending September 30, 2002, 2003, and 2004, respectively.

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Mr. Palmer asked if the city will go out to bid at the end of the third year. Mr. Hill said if the firm felt Council was satisfied, he suspects the firm will offer some willingness to extend the contract. However, this is only a three-year agreement and it is entirely within Council's control. He confirmed for Mr. Palmer that we have used this firm in various forms for about 20 years.

The question was called. Motion carried unanimously.

14. ORDINANCE NO. 2002-65 (Z-2002-931): (Public Hearing/First Reading) An ordinance changing the zoning from R-1A (Single-Family Residential) to C-1 (Neighborhood Commercial) on two platted lots (Lots 7 and 8) of the Palm Gardens Subdivision, consisting of .33 acres, located on the west side of Bryan Street, south of New Haven Avenue. (Owner - Emmett B. and Cheryl F. McGill, Owner, with pending sale to CVS Pharmacy) (Applicant - Skilken Properties) (Representative - Jay R. Jackson) (P&Z Board 9/5/2002)

Attorney Gougelman read Ordinance No. 2002-65 by title.

Mr. McCord reviewed the agenda report. The property has been zoned R-1A since adoption of the original Zoning Code in 1972. A house built in 1955 is located on one of the lots. Later in 1972, a proposal was presented to Council to rezone Lots 7 and 8, Block 4, from R-1A to C-1 (Z-34). This rezoning request was denied. Also in 1972, the Planning and Zoning Board initiated action that would change the zoning on the rear lot of the adjacent Miguel's Restaurant from R-1A to C-1 (Z-37/Ordinance No. 72-36). It was indicated that this rezoning was to correct an error on the zoning map that apparently was not corrected when the official zoning map was first adopted. The existing zonings were approved prior to the adoption of the Comprehensive Plan in 1988. As part of the adoption of the Comprehensive Plan in 1988, the mixed-use Low Density Residential/Commercial land use on the property (Lots 7 and 8) was established.

The adopted Future Land Use on the property is mixed use Commercial/Low Density Residential. This land use limits residential densities to no more than six units per acre. The property to the west of the subject property is zoned C-1 (Neighborhood Commercial) and consists of a small strip retail center. The property to the south is zoned R-1A and contains a single-family home. The land use on this lot is also mixed use Commercial/Low Density Residential. The property to the north is now the site of Miguel's Restaurant, which will be used with the subject property as part of a CVS Pharmacy site. The property located across Bryan Street to the east is zoned C-1 and R-1A. The C-1 zoned lot contains a produce store and the R-1A zoned lot contains a single-family home.

If the rezoning is approved the applicant proposes to use the two lots for retention, parking and a landscaped buffer. The property that is the subject of this rezoning request would not contain a structure, with the exception of a small portion on the north side of the lot, which would be used for a drive-up window canopy. The proposed development of the CVS Pharmacy would be located where the old Chevron station and existing Miguel's Restaurant are currently located. The Miguel's Restaurant property, zoned C-1,

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with the C-2 zoned gas station property would permit the development of the retail store. The residentially zoned lot requires the zoning change to use a portion of the lot for parking associated with the store.

If the rezoning is approved and the applicant proceeds with acquisition and development, the city needs to require that the applicant not oppose administrative efforts by the city to rezone the C-2 zoned property to C-1 so that we can create a uniform zoning for the property (single development site).

The applicant's representative has indicated that they would support administrative efforts to rezone the C-2 zoned property to C-1 upon CVS acquiring the property. To provide assurance to the existing property owner of the C-2 zoned property, if the drug store is not built and the closing does not go through, the property will remain zoned C-2. Upon adoption of an ordinance to change the zoning on the westerly portion of the site (C-2 to C-1) a number of variances previously granted for the properties for the existing uses or for proposed uses should be revoked since the hardships identified or determined to exist on these properties will no longer apply under the redevelopment scenario. The conceptual plan does not indicate a design that would require variances.

The Planning and Zoning Board recommended approval of the rezoning with the findings listed in the agenda package and the following condition:

- a. The applicant or applicant's successors shall agree to not object to administrative attempts by the city to rezone Lots 1, 2, 3, and 13, Block 4 of the Palm Gardens Subdivision from C-2 to C-1 upon the applicant or applicant's successors acquiring and holding title to such property.

The stipulation has been included in the proposed ordinance.

Mrs. Poole expressed disappointment with a drugstore taking the place of an historical part of the city (removal of Miguel's).

Frank Petruziello, Skilken Properties, Columbus, Ohio, stated that they agree with the condition (to not oppose the administrative rezoning). Additionally, he noted that the trees on the property will remain. The few parking spaces planned for the parcel will be for employee parking.

Mrs. Poole asked if the trees east of Miguel's will remain. Mr. Petruziello said he is not aware of any trees east of Miguel's. Mr. McCord displayed the aerial, which did not indicate a stand of trees east of Miguel's.

There were no further comments from the audience.

Moved by Hand/E. Palmer for approval of Ordinance 2002-65. Motion carried. Mrs. Poole voted nay and said she can't support seeing history "go down the drain."

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15. ORDINANCE NO. 2002-66 (Z-2002-935): (Public Hearing/First Reading) An ordinance changing the zoning from C-1 (Neighborhood Commercial) to C-2 (General Commercial) on six lots totaling 1.29 acres located on the north and south sides of University Boulevard, west of the Florida East Coast Railway tracks and east of Monroe Street. (Owner/Applicant/Representative – Alex and Minnie Spivey) (Owner – Leon A. Tucker) (Owner – Donald and Mary B. Jenkins) (Owner/Applicant – Shiloh Christian Center) (Representative – Phyllis R. Cokley) (P&Z Board 9/5/2002)

Attorney Gougelman read Ordinance No. 2002-66 by title.

Mr. McCord reviewed the agenda report. The lots on the north side of University Boulevard were originally part of Block K of the old South Melbourne Plat (P.B. 1, Page 59) platted in 1886. Two of these lots are developed. One contains a former church built in 1952 (K8) and the other (K4) contains a beauty shop built in 1998. Two of the other lots contain a parking lot. On the south side of the street are un-platted parcels containing a closed non-conforming auto repair facility (Parcel 508) built in 1962 and a convenience store (Parcel 510) built in 1957. The two other parcels (509 and 509.2) are vacant.

The property has an adopted Commercial land use and is zoned C-1 (Neighborhood Commercial). The properties on the north side of University Boulevard are surrounded on the west by a single-family developed subdivision zoned (R-1A) (Grambling Park), on the north by a vacant parcel with a Medium Density Residential land use with R-2 (One-, Two- and Multiple-Family Residential) zoning, and to the east by the FEC Railway and M-1 (Light Industrial) zoned property. The properties on the south side of University Boulevard are bounded on the west across Monroe Street by an apartment complex zoned R-2, to the south by a single row of lots zoned C-1 containing a business, a single-family home and an apartment house. These adjacent lots front on Monroe Street, Swift Street, and Main Street. To the east across South Main Street is the Glover Oil Distribution Facility, zoned M-1.

The applicants for several of the properties joined with their neighbors to provide enough contiguous properties to comply with the Zoning Code, which requires 40,000 square feet (.92 acres) of property for a zoning change. This requirement avoids the creation of “spot” zoning. The total land area of the applicant’s request equals 2.01 acres and each of these properties form a contiguous row of properties on each side of University Boulevard. The proposal, if approved, also would leave a strip of C-1 zoned (less intensive than C-2 zoning) properties along the south side of the properties proposed for rezoning and thus creating a step down effect in intensities between the proposed general commercial zoning and the R-1A (Single-Family) zoned properties to the south.

Five of the eight properties are now developed. The property on the north side of University adjacent to the R-1A zoned subdivision is a retail establishment (beauty salon), which is a permitted use in the C-1 zoning district. Lots with side yards that are adjacent to developed residential uses should be retained for low intensity commercial uses per the Future Land Use Element, Objective 6f, while lots adjacent to other commercially zoned lots and not contiguous to lots zoned for residential uses may be

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considered for a more intensive commercial use such as C-2. In this regard, Lot K4 and Parcel 510 should remain zoned C-1, but the other lots may be considered for general commercial use. Lots K4 and Parcel 510 have a side yard or front yard adjacent to or facing residential use while the rear yards of the lots on the north side of University Boulevard abut R-2 zoned lots. The R-2 zoned property is vacant and contains a boarded up building. This progression creates a step up in intensity particularly when considering the property to the east is zoned M-1 and the property to the south is zoned C-1, and provides a step down in intensity of uses between University Boulevard and the Sunset Homes Subdivision to the south. Based on the size of the properties it is unlikely to attract non-compatible uses to the two block long commercial corridor.

The Planning and Zoning Board did not agree with all of the applicants' requests. No specific development is proposed except that one owner desires to change an existing commercial use to a commercial use not now permitted in the C-1 zoning district (car sales). City Code, Appendix B, Article XII, Section 12 (A) (1) (h) permits auto sales lots in the C-2 zoning district with six design and performance standards. Based on the size and location of the property where the applicant proposes to operate a car sales lot (.21 acres/Parcel 508) the lot complies with minimum lot size requirements and has greater than 150 feet of street frontage, since the parcel is surrounded on three of four sides by streets with 327 feet of street frontage. Each of the lots in the affected area comply with the minimum lot sizes required in the C-2 zoning district, with the exception of Parcel 509.2, a 19-foot wide sliver of a parcel which is non-conforming in the C-1 and C-2 districts. Lots K4 and Parcel 510 should remain zoned C-1 to preserve the low intensity commercial use adjacent to residentially developed properties.

The Planning and Zoning Board recommended approval of rezoning Lots 8, 6 and 3, Block K, Plat of South Melbourne, and Tax Parcels 508, 509, and 509.2, consisting of a total of 1.29 acres, with the findings listed in the agenda package.

The Planning and Zoning Board recommended denial of the request to rezone Lot 4, Block K, Plat of South Melbourne and Tax Parcel 510, consisting of .72 acres, because the proposed rezoning would result in the possible development of intensive commercial uses adjacent to low density residential uses and across the street from developed multiple-family use, the sites are now developed with viable commercial enterprises, and the rezoning is not necessary to create or provide for lucrative use of the properties.

The ordinance only includes the legal description of the lots recommended by the Planning and Zoning Board.

Mr. McCord confirmed for Mrs. Poole that the maintenance of vehicles will be the accessory use. Also, he noted that the property will have to meet the current landscape code.

Mr. McCord and Attorney Gougelman confirmed for Mr. Palmer that a used car lot needs 150' of street frontage. And, the Code does not prohibit the frontage from being on two streets as part of a corner lot.

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Minnie Spivey, applicant, 3427 Saxon Street, stated that the property will primarily be used for a car clean-up and detailing shop. If the rezoning is approved, she said they will sell some cars from the property.

Moved by C. Palmer/E. Palmer for approval of Ordinance 2002-66. Motion carried unanimously.

16. ORDINANCE NO. 2002-67 (CPA-2002-09) AND ORDINANCE NO. 2002-68 (Z-2002-936): (Public Hearings/First Readings) An ordinance amending the Future Land Use Map by changing the land use from Low Density Residential to mixed use Commercial/Low Density Residential and an ordinance changing the zoning from R-1A (Single-Family Residential) to C-1 (Neighborhood Commercial) on 2.306 acres, located on the north side of University Boulevard, west of Lipscomb Street and east of Grant Street. (Owner – Marcus Sanders) (Owner/Applicant – Michael Montgomery) (Representative – Jake Wise) (P&Z Board 9/5/2002)

Attorney Gougelman reported a change in the law, which requires the city to provide a sign-up sheet for each Comprehensive Plan amendment. Citizens interested in receiving information about the specific amendment from the Florida Department of Community Affairs are encouraged to add their name and address to the sign-up sheet. The sheet will be forwarded to DCA with the city's package of information.

Mr. Gougelman read each ordinance by title. Mr. McCord reviewed the agenda report. The property consists of two unplatted parcels and a portion of another unplatted parcel. Two single-family homes with large yards and a few trees are located on two of the parcels. The houses were constructed in 1950 and 1962 and contain 910 sq. ft. and 2,405 sq. ft. respectively. The property has been zoned R-1A since adoption of the original zoning map in 1972.

The three unplatted parcels have an adopted land use of Low Density Residential and are zoned R-1A (Single-Family Residential). The property to the north is zoned R-1A and consists of a large unplatted vacant lot. The property to the west is zoned R-1A and contains single-family homes, and the property to the east has a mixed-use Commercial/Low Density Residential land use and is zoned C-1. The property to the south consists of a 7,500 sq. ft. lot (75' x 100') zoned R-1A (Parcel 29.2). The properties across the street (University Boulevard) are zoned R-P (Residential Professional) and R-2 (One-, Two-, and Multiple-Family Residential) and contain single-family homes and apartment buildings, respectively.

There is little likelihood of single-family homes being developed on the remainder of the properties. The parcels are of such size that it is unrealistic that they would be subdivided into lots for single-family homes. If permitted to develop commercially the properties could be a part of a minor commercial/office hub for the neighborhood if designed and managed properly. This could include a mix of retail/office and residential uses.

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The proposed change would be considered a minor amendment to the Comprehensive Plan.

The total land area of the applicant's request equals 2.306 acres on the north side of University Boulevard. The proposal would also extend a corridor of Commercial/Low-Density Residential land use and C-1 zoned properties from Lipscomb Street west along University Boulevard. University Boulevard is more conducive to accommodating commercial zoning than Lipscomb Street because it is a four-lane street and the subject properties front directly on University Boulevard and are located a greater distance from more dense single-family development. The parcels are of such size that a significant buffer could be provided between the vacant residentially zoned property to the north and still provide more than a sufficient amount of property for commercial development. The parcels are 270 feet in depth.

Parcel 29.2 is not included in the applications. If the amendment is approved, this .17-acre parcel would remain with a Low Density Residential land use with R-1A zoning completely surrounded by Commercial/Low-Density Residential land use with C-1 zoning.

The property to the east is zoned C-1. The subject parcels are of such a size that they can easily be developed for commercial use, but are not desirable to remain as a single-family residential use. The Lipscomb/University area is an increasingly busy neighborhood activity center that could better be served with neighborhood commercial uses.

Each of the parcels in the proposed area complies with the minimum lot sizes required in the C-1 zoning district.

The Planning and Zoning Board recommended approval with the findings outlined in the agenda package.

Mrs. Poole expressed concern that the development could turn into another Simmons Plaza (property formerly known as a drug hangout now occupied by the library). Mr. McCord said they could build stores, renovate houses, etc. However, he noted that he would not put it in line with the former plaza across the street.

Jake Wise, representing the applicant, said that University Boulevard is mixed use; therefore, they believe that this proposal will be compatible with the area. He reported that the 2,600 s.f. home has been renovated and they are in the process of replatting. He added that the owner doesn't have a firm plan at this point; however, the intent is to improve the area and have commercial/professional development. The C-1 zoning will allow residential, church, and retail uses. It is also a less intense commercial use. Regarding the comment about Simmons Plaza, he said that structure was old and falling apart. Mr. Wise concluded by saying there is an immense amount of traffic in this area that is not conducive to single-family homes.

Mayor Buckley said he is concerned about the small piece of property not included with this request. Mr. Wise reported on the communication he has had with the property

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owner and said that the owner recently indicated a willingness to consider an administrative rezoning of the parcel.

Mr. McCord identified the parcel on the map for Mr. Palmer (parcel 29.2).

Moved by Hand/Contreras for approval of Ordinance No. 2002-67. Motion carried unanimously.

Moved by E. Palmer/Walker for approval of Ordinance No. 2002-68. Motion carried unanimously.

Recessed: 8:57 p.m.  
Reconvened: 9:09 p.m.

17. ORDINANCE NO. 2002-69 (Z-2002-937) AND SITE PLAN APPROVAL (SP-2002-21): (Public Hearing/First Reading) An ordinance changing the zoning from R-4 (Two-Family Dwelling District) (duplexes) to R-2 (Cap 6) (One-, Two- and Multiple-Family Residential with a cap of six units per acre) and site plan approval for a 30-unit multi-family apartment complex on five acres, located on the north side of Carlton Drive, east of Croton Road, west of Stewart Road and south of Johnson Junior High School. (Owner/Applicant - ACW Builders, Inc./Andrew Graham) (Representative - Jake Wise) (P&Z Board 9/5/2002)

Attorney Gougelman read Ordinance No. 2002-69 by title.

Mr. McCord briefed Council. The property was originally annexed into the city in 1984 and was zoned R-4. This zoning was not approved with a specific site plan but one was provided with the original zoning application indicating a proposed plat of 18 duplex lots. Before adoption of the Comprehensive Plan and Low Density Residential land use, R-4 zoning permitted up to eight units per acre.

The adopted Future Land Use is Low Density Residential. This land use limits densities to no more than six units per acre. The property to the north is the site of Johnson Junior High School zoned I-1 (Institutional) with a Public Lands and Institutions land use. The remaining surrounding properties are in the unincorporated enclave of Brevard County. The properties to the west are zoned RU-1-11 (Single-Family Residential) and one lot is zoned TR-1 (Single-Family Mobile Home). The property to the east is zoned AU (Agricultural Residential) and contains a single-family home on a five-acre lot and the property to the south across from Carlton Drive is zoned RU-1-11 and mostly contains single-family homes. All county land uses are designated with a Residential land use permitting up to 15 units per acre.

The applicant has requested the rezoning because he does not desire to plat the project but to develop apartments in a multiple-family duplex design setting, which would be retained in single ownership. Under the existing zoning the property would require subdividing into a minimum of 100' x 100' platted lots each containing a duplex. Based on the size of the property (300' x 720') a maximum of 14 Code complying lots containing a total of 28 units could be developed by replatting the five-acre lot. This assumes that a

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single cul-de-sac street is constructed north from Carlton Drive. Twenty-eight units on the five-acre lot would represent a density of 5.6 units per acre. Under the proposed rezoning and proposed site plan up to six units per acre could be developed.

This is one of the few parcels in the city zoned R-4. Most duplexes and apartment complexes are zoned R-2. Only the Country Club Gardens Subdivision at Lake Washington Boulevard and Stewart Road, the subject property, and a portion of property left over for the eagles nest buffer at Eagle Lake Subdivision are zoned R-4. Duplex lots can be created within the R-2 zoning district as well as the R-4 district. Most developers have elected to pursue development under R-2 zoning since it provides greater flexibility or better fits a marketing or ownership arrangement. The intent of the R-4 district is duplicated by the intent and the provisions of the R-2 zoning district and the need for an R-4 district has proven to be unnecessary to provide the type of housing provided for in the R-4 district.

Mr. McCord reported that the city received a valid petition of opposition from area property owners. The total area of land within 500' of the subject property owned by individuals that signed the petition is 36.99%. The Zoning Code requires a 6/7 vote by City Council when the percentage meets or exceeds 20%. The 6/7 vote will be required at second reading.

If the rezoning is approved the applicant is seeking site plan approval consistent with the requested zoning. The proposed plan consists of a multiple-family development with 15 separate apartment buildings, each containing two units for a total of 30 units. A private driveway ending in a cul-de-sac will extend north from Carlton Drive. The driveway will contain sidewalks including one that will provide access to Johnson Junior High School. A sidewalk will also be constructed along the Carlton Drive frontage. Retention will be provided in two separate basins located along the south side of the property with swales extending the length of the property. The swales now exist along the side lot lines. Unlike other area developments located in the county, this project will be served with city water and sewer.

The buildings will all be one-story structures with a minimum building setback of 25 feet from the side yards, 79 feet from the front yard, and 31 feet from the rear property line. This complies with Code required setbacks for the R-2 zoning district and far exceeds the building setbacks for the existing R-4 zoning district. It would be possible to add a second floor to the proposed buildings without increasing the required setbacks. The proposed building height is 18 feet. Each unit will provide a single car garage as well as parking space within the individual unit driveways. This complies with the parking requirements in the R-4 zoning district. Garages will setback at least 30 feet from the common driveway. Sixty parking spaces are proposed.

If the owner elects to plat the properties at some future date the building setbacks would comply with the minimum setback requirements in the R-2 zoning district. If developed in the R-4 zoning district front setbacks would need to be 30 feet for two family units while in the R-2 district front setbacks are required to be only 20 feet. Single-family homes constructed in the R-2 zoning district require a minimum front setback of 20 feet.

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There appears to be no environmental issues on the property or on adjacent properties that would hinder the requested zoning change or affect the site plan. The applicant has provided an Environmental Impact Assessment report. The property does not appear to contain endangered or threatened species. The site contains a number of large hardwood trees including 51 oak trees. The buildings and driveways are being configured to save 26 of these trees, mostly at the north end of the site.

A utility easement would be desirable near the northerly portion of the site to facilitate the extension of utilities to adjacent properties at some future date.

The proposed project will generate approximately 198 daily trips and require 8,640 gallons per day of water and sewer treatment/service. This is only 14 more daily trips and only 576 gallons more per day than what would be generated if developed under the existing zoning. Recreation would be available on the grounds of Johnson Junior High School. This school is one of three identified in the Comprehensive Plan to fulfill recreation standards. Upon development of this project and all other proposed projects in the city, infrastructure capacity will remain to meet service needs within the city and no facility will operate at a deficient level of service.

The Planning and Zoning Board recommended approval of the rezoning with the findings listed in the agenda package. Additionally, the board recommended approval of the site plan for Graham Duplexes subject to several stipulations (outlined in the package). If the rezoning is approved, the site plan would return to Council at the next meeting for consideration.

Mr. McCord confirmed that the site plan does not come into play until second reading of the ordinance. The site plan was provided to give Council a greater understanding of the development.

Mrs. Palmer asked what size the lots would be on the site plan. Mr. McCord reported that it will remain a five-acre parcel; it won't be divided into lots. Under the existing R-4 zoning, the owner would have to subdivide with a minimum of 100' x 100' lots. He added that a duplex can't be platted in the R-2 zone.

Mayor Buckley asked if they would lose two lots if the property remained R-4. Mr. McCord clarified that it would remain one lot with a maximum number of 28 units.

Mrs. Walker asked about the specifications for the swales. Mr. McCord said the swales would have to be engineered. Mrs. Walker said she has received calls and e-mails about the ineffectiveness of swales. She asked who would be responsible for maintenance. Mr. McCord said the property would be under one ownership and would be maintained by the apartment or community manager. Additionally, Code Enforcement would provide enforcement of the regulations.

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Mrs. Poole questioned how the junior high school can be accessed through this property. She reported that she looked at the site on Sunday and she saw a fence on the school property.

Mrs. Poole said a five-acre farm with horses is located east of this property. She said she does not believe this development would be compatible next to a farm because of flies, odor, noise, etc. Mr. McCord replied that he does not believe there is a significant difference between 30 units as part of this request or 28 units under the current zoning.

Mr. Palmer asked the advantage of the rezoning. Mr. McCord noted that they gain two units plus the applicant doesn't have a desire to plat the property.

Mrs. Palmer asked if the applicant would be required to follow the site plan with regard to placement of the units or if they would have flexibility and be allowed to go two- or three-story. Mr. McCord said the applicant could keep the density; however, if they wanted to go two-story, they would have to return for approval.

Mrs. Palmer asked if the city would require a certain number of feet between units. Mr. McCord replied that would be determined by the fire regulations. He added that R-4 zoning does require a separation.

Council made the following disclosures:

Mrs. Palmer said she spoke to Mrs. Nolin (1137 Carlton Drive) and visited the site with Mrs. Nolin and Mr. Brown (1121 Carlton Drive). She noted that they both spoke in opposition to the request. Mrs. Hand said she spoke with Mrs. Nolin and visited the site. Mrs. Walker said she did the same. Mrs. Poole said she also spoke with them and visited the area. Mr. Contreras said he spoke with Mrs. Nolin who is opposed to the request. Mayor Buckley said he spoke with a resident from 1137 Carlton Drive who expressed concern about the safety of the children coming from the school along Carlton Drive. He said her main concern was that building that many duplexes in the area would endanger the children; therefore, she is opposed.

Jake Wise, representing the applicant, said that the site won't be platted; therefore, it will be under one ownership. The R-2 zoning will reduce the front setback and provide an opportunity to have a curve in the road, save trees, and stagger the duplexes in order to create character. That is the reason for the request – not to have 30 units versus 28 units.

Continuing, Mr. Wise said they have agreed to construct a sidewalk along both sides of the road. He confirmed that there is no fence (on the school property) and kids cut through. The area is overgrown with exotic species. They plan to clean up the swales and make the area more aesthetically pleasing. He pointed out that the SJRWMD has requirements that will have to be met. Mr. Wise elaborated on the type of trash that has been removed from the site.

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Continuing, Mr. Wise said they will be required to reduce runoff as a result of creating new impervious area. Additionally, water and sewer will be brought in from Croton Road, which will provide the ability for area owners to tie in. A five-unit duplex is located on Croton Road, so this type of development is not new to the area. Because of the soil conditions, they are proposing wet ponds. He reported that the ponds can be stocked with fish to address mosquito concerns. Also, the ponds will be fenced because of the number of children in the area.

Mr. Wise discussed maintenance of the swales and noted that a simple phone call can be made if the swales are not maintained. He added that if this request is denied, they will return with a similar plan under the current zoning, which provides for a straight road, duplexes in a straight line, and the removal of trees, including oaks.

Mr. Contreras referenced the comment about a “simple phone call” if swales aren’t being maintained and asked if there will be on site management. Mr. Wise said he does not know; however, he added that it is likely that the management won’t be on site.

Mrs. Poole questioned why trees have to be lost if the project is developed under the current zoning. She pointed out that two less units should allow for trees to be saved. Mr. Wise pointed out on the overhead that the majority of oaks are around the cul de sac. The flexibility under the proposed zoning with the front setback will allow for trees to be saved. The R-4 zoning will result in the road being brought straight in with the cul de sac in the middle.

Mr. Wise confirmed for Mrs. Hand that along their portion of the property there is no fence (adjacent to the school). He added that there is a ditch behind the property. It is open and dry and looks as if vehicles drive through it.

Leslie Woodring, 540 Hoot Owl Court (located east of the subject property), confirmed that there is no fence located between the subject property and the school. Mr. Woodring stated that since something will be built, the residents would like it to look nice.

Keith Brown, 1121 Carlton Drive, said he does not understand the difference between the two requests. He added that it seems logical for the duplexes to be on 100’ lots. Mr. Brown commented on the following: a curve won’t matter on a 600’ section of roadway; the school needs to erect a fence so children don’t cut through the property; the project can be developed with 100’ lots and still remain under one ownership; if the property is rezoned and then sold, a new owner could build a condominium or apartment complex under R-2 zoning. Mr. Brown asked Council to think seriously about this project.

Dirk Schmidt, 1097 Lindholm Place, referenced his letter (in the agenda package), which discusses the importance of protecting the local wells that are used for drinking water.

Moved by Contreras/Buckley for approval of Ordinance 2002-69.

Mayor Buckley pointed out that there are only two properties in the City of Melbourne on the petition of opposition; the remaining properties are located in the county. The Mayor

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later clarified that the enclave area should be in the city. And, the proposal that is being made appears to be a lot better than what could develop on the property.

Mrs. Palmer said it is important for the city to view the entire area as a neighborhood; some day the properties may annex.

Mrs. Hand said she has problems with this plan. She noted that she believes Carlton Drive is too small to accommodate more traffic. She is also concerned that children will walk through the ditch to reach Johnson Junior High School.

Mrs. Palmer said the meandering street doesn't appear to save that many trees; however, it does allow a variation in the setback. The area has half-acre lots with houses and she believes the proposed development is not compatible with the nature of the area. She concluded by saying that doing anything to increase density would be an injustice.

Mrs. Poole stated that the area residents might be more inclined to annex if the city thought of them as its neighbors. She commented that she does not believe the development is compatible and hopes the applicant looks elsewhere to build this project.

Mr. Palmer said R-4 zoning requires 100' x 100' lots with a certain separation between structures. He added that R-4 is more compatible with the neighborhood.

Mr. Contreras pointed out that the proposed development would result in 14 more daily trips than if the property were developed under the current zoning. The subdivision is going to be developed and the best the city can do for the surrounding area is to allow the meandering road, which will act as a traffic-calming device. He stated that he supports the request as it stands.

Mrs. Walker said she likes the meandering street; however, she does not agree with a lot of the other aspects of the development. She stated that the city needs to be a good neighbor.

The question was called. The roll call vote was:

Aye: Contreras and Buckley

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

Motion failed.

18. ORDINANCE NO. 2002-70 (Z-2002-938): (Public Hearing/First Reading) An ordinance changing the zoning from R-A (Residential Holding) to R-1A (Single-Family Residential) on an 8.628-acre parcel and a .955-acre parcel, located on the east side of Dairy Road, north of Florida Avenue and south of Edgewood Drive. (Owner - Mary E. Heardon Estate and Walter and Mildred Heardon) (Applicant - Charles Sabin) (Representative - Mason Blake) (P&Z Board 9/5/2002)

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The attorney read the ordinance by title.

Mr. McCord reviewed the agenda report. The properties have been zoned R-A (Residential Holding) since the creation of the new City of Melbourne in 1969. In 1988, the Comprehensive Plan was adopted, which established mixed use Public Lands and Institutions/Low Density Residential land use on the two parcels. One of the properties is vacant and the smaller parcel contains a single-family home. The properties have been used for agricultural uses including the keeping of farm animals. The applicant proposed a land use and zoning change, and conditional use permit request on the property for mini-storage, but was later withdrawn by the applicant in July 2002.

The site is now zoned R-A (Residential Holding). The site abuts an existing single-family development to the north and east, Dairy Road to the west, and county (Residential) zoning on the west side of Dairy Road with a Future Land Use designation of Residential with a maximum of four units per acre. The property located to the south is the VFW Post zoned I-1. The property to the east is zoned R-A and is part of a drainage canal and retention basin for the Forest Creek Subdivision.

The applicant's properties are completely surrounded by properties that are developed in compliance with the existing land uses. The proposed change would provide a measure of assurance to other property owners that the residential nature and character of this section of Dairy Road will be retained for residential development/uses.

As part of the Joint Planning Agreement with the county, we have received comments from county staff indicating that the proposed zoning change presents no problems with the county established land use and zoning in the area. The lots across Dairy Road to the west are zoned RR-1 (Rural Residential), SR (Suburban Residential) and AU (Agricultural Residential) by the county. RR-1 requires a minimum lot size of one acre, SR requires a minimum lot size of one-half acre, and AU requires a minimum lot size of 2.5 acres. Most of the development on the west side (county side) of Dairy Road consists of single-family homes on large lots. There is no sanitary sewer for the development in the unincorporated area.

Recently, single-family homes have been constructed along Dairy Road in the City of West Melbourne. These homes have been constructed after the four-laning of the roadway.

The applicant proposes to develop a single-family subdivision in the future. When platted under the requirements of R-1A zoning, the minimum lot size would be 75' x 100'. A retention basin would be required on the property upon development. An estimated 24 to 30 single-family homes could be built on the property. Access would be to/from Dairy Road.

The Planning and Zoning Board recommended approval of the request with the findings outlined in the agenda package.

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Mrs. Poole asked if the original proposal for this site was for a mini-storage facility. Mr. McCord said the applicant withdrew that application last summer. Mrs. Poole said that this is a better plan.

R. Mason Blake, representing the applicant, agreed with the staff report and recommendation for this item. He discussed the development and noted that it will ensure the residential character of Dairy Road. Additionally, R-1A zoning is prevalent in the area and consistent with the Comprehensive Plan.

Mrs. Poole asked if there was a plan to request a rezoning after the R-1A zoning is obtained. Mr. Blake replied no.

There were no further comments from the public.

Moved by Hand/C. Palmer for approval of Ordinance No. 2002-70. Motion carried unanimously.

19. ORDINANCE NO. 2002-71 (Z-2002-939) AND PRELIMINARY PLAT APPROVAL (SD-2002-04): (Public Hearing/First Reading) An ordinance changing the zoning from R-1A (Single-Family Residential) to R-1B (Single-Family Residential) on a 5.526-acre portion of a platted subdivision, and site plan approval for Faith Landings Subdivision on 8.822 acres (which includes the property to be rezoned, plus two tracts that will retain the existing R-1A zoning) located on the north side of Florida Avenue, west of Lipscomb Street and south of University Boulevard. (Owner – Reverend Stephen Holmes) (Applicant – South Brevard Habitat for Humanity) (P&Z Board 9/5/2002)

Attorney Gougelman read Ordinance No. 2002-71 by title.

Mr. McCord briefed Council. The vacant property was platted as the Sunny Pines Subdivision in 1926 and R-1A zoning was established on the property when the original zoning map was adopted in 1972. The adopted Future Land Use is Low Density Residential.

The property to the east consists of single-family homes, zoned R-1A, in the Briarwood Subdivision. The parcel to the west is vacant and is zoned R-1B and R-2. The property to the north consists of the remainder of the mostly vacant Sunny Pines Subdivision, which will remain zoned R-1A.

This proposal is an affordable housing project and supports several goals of our Comprehensive Plan. The homes will be constructed by Habitat for Humanity and will include a garage and an additional driveway parking space.

The property and the existing subdivision consist of a four block, 95-lot subdivision that was platted but never developed. The existing platted lots, for the most part, are only 25 feet in width and approximately 129'-130' in depth. The lots are non-conforming with the existing zoning, which requires a minimum lot size of 75' x 100'. The applicant is requesting the rezoning in order to develop a single-family subdivision consistent with the

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city's current standards for R-1B zoning and the subdivision regulations. Under the existing design not only are the lots too narrow to comply with Code but also to comply with the Comprehensive Plan policy related to density (FLUE, Objective 6d). One-half of the lots are double frontage lots and, while not illegal, these lots do present a design and use problem. The current platted subdivision also indicates an overlapping of the legal descriptions of the adjacent Briarwood Subdivision. Re-platting the subdivision will help to correct the problem of the overlap.

The proposed replat will consist of 28 lots (3.17 units per acre) with four proposed streets, one retaining (Aldrin Street also known as Myrtle Street) and extending north from Florida Avenue, one extending and retaining the existing Fountain Street to the west, one extending and retaining Redbud Street (also known as Bay Street) to the west, and one retaining a portion of Laurel Street, now known as Glenn Street, in the center of the property. All street names must be approved by E911 prior to final platting.

The lots range from 5,750 square feet to 8,250 square feet. These are generally the same size lots as the adjacent Briarwood Park Subdivision, which are generally 6,500 – 7,000 square feet in area.

The applicant has identified by the gray shading on the plat drawing what proposed streets or portions of existing streets will be constructed as part of the plat. In addition to the area shown in gray, that portion of Redbud Street from Laurel Street to Myrtle Street should also be improved as part of the construction plan drawings.

A retention pond will be located on the south central portion of the property with outfall to the drainage ditch within the Florida Avenue right-of-way. The plat will contain four tracts. Tract A (0.15 acres) will be reserved for and used for additional right-of way for Florida Avenue and will eliminate a jog in the existing right-of-way line. Tract B (2.06 acres) will be used for future development of the Testimony Baptist Church, and Tract C (1.29 acres) will be used for a retention basin. Tract D (.163 acres) will provide a landscape buffer to avoid creating double frontage lots. A sidewalk is required along Florida Avenue and the local streets within the subdivision.

The Environmental Impact Assessment report indicates that the site is primarily a scrubby pine flatwoods with a thick under-story of palmettos and a cleared grassed area. Most of the trees on site will be removed. These trees for the most part are pines. Gopher tortoises inhabit the property. Removal or taking of these tortoises will require a permit from the Florida Fish and Wildlife Conservation Commission. According to the environmental report no scrub jays inhabit the property but the birds do inhabit the property adjacent to and west of the site. The USFWS recommended construction methods to follow when developing the site, including that site clearing only take place outside of the nesting season (March 1-June 30).

The proposed preliminary plat is consistent with the Land Development Code, including Appendix B, Zoning, Appendix D, Land Development Regulations, and Chapter 29, Subdivision Regulations. All proposed lots comply with the requirements for R-1B zoning.

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The Planning and Zoning Board recommended approval with the findings outlined in the agenda package. The recommendation does not include the portion of the subdivision that overlaps the westerly portion of the Briarwood Subdivision.

Additionally, the board recommended approval of the preliminary plat with several conditions. If the rezoning is approved, the plat will return to Council on the next agenda for consideration.

Kim Gabriel, President, South Brevard Habitat for Humanity, asked Council to accept the Planning and Zoning Board recommendation. She noted that the subdivision will provide affordable housing for the economically disadvantaged in our community. She noted that Habitat pledges to keep an eye on the community to ensure its success in the future. Ms. Gabriel reported that they have a waiting list with over 60 families. The subdivision is scheduled for completion by the fall of 2004 and they are applying for SHIP funding to help with infrastructure.

Moved by Walker/Hand for approval of Ordinance No. 2002-71. Motion carried unanimously.

Mrs. Poole said she voted for this development because the homes will have garages.

20. RESOLUTION NO. 1783 (CPA-2002-06, CPA-2002-07, AND CPA-2002-08): (Public Hearing) A resolution authorizing the transmittal of three Comprehensive Plan Amendments to the Florida Department of Community Affairs. (P&Z Board 9/5/2002)

Mayor Buckley announced that a sign up sheet is available for all three amendments for anyone interested in receiving future information from the Florida Department of Community Affairs on these amendments.

Attorney Gougelman read Resolution No. 1783 by title.

Mr. McCord briefed Council and reported that these are three major Comprehensive Plan amendments (over 10 acres each), which staff is proposing to send to the Department of Community Affairs. If the amendments are approved, the properties will annex into the city.

Council needs to consider the land use on the property if it is annexed into the city. The procedure will be: conduct a public hearing and transmit the amendments to DCA; following receipt of the Objections, Recommendations and Comments response from the DCA in about 45 days, hold public hearings on the annexations, land use designations and zonings; and adopt the annexations, land use designations and zonings.

- a. CPA-2002-06: A Comprehensive Plan Amendment to establish Commercial land use on a 17.78-acre property located on the east side of Wickham Road, on the south side of Business Center Boulevard, in Township 26, Range 37, Section 30.

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(Owner - Majesty Florida Limited Partnership) (Applicant/Representative - Philip F. Nohrr) (P&Z Board 8/15/2002)

The property was platted as Lot 1 of Wickham Road Business Center South, Phase One in 1984, and has remained vacant since platting. At one time there was a small office on the property but it was demolished a couple of years ago.

The site is zoned BU-1 (General Retail and Commercial) by Brevard County. The site abuts an existing single-family development to the southeast (Live Oak Subdivision), a developed parcel used for a child care center, zoned BU-1-A (Restricted Neighborhood – Retail/Commercial), to the south/southwest, and two lots of the Wickham Road Business Center South to the east, zoned IU-1 (Heavy Industrial) by Brevard County. To the north across from Business Center Boulevard is property zoned BU-1 that is vacant, and a lot that contains Suntree Montessori School and a dentist office. The property located to the west across from Wickham Road is the westerly portion of the Pineda Crossing Subdivision (zoned PUD) and a vacant parcel that is zoned BU-1 by Brevard County. The property is contiguous to the city boundary by a 330-foot portion along the south boundary. The property contains pine scrub oaks, wax myrtle, other palmetto, and other under-story vegetative species.

As part of the Joint Planning Agreement with the county, we have received comments from county staff indicating that there is no objection to the annexation and proposed land use and zoning. The proposed city land use and the existing county land use are nearly identical. A 100-foot wide drainage easement for stormwater retention exists along the southeast boundary of the property. At the time of development, this easement will provide an effective buffer between the remainder of the property and the Live Oak Subdivision to the southeast.

The applicant is requesting the establishment of Commercial land use for the property. The existing county land use is Neighborhood Commercial. The advisory city land use adopted as part of the 1998 Comprehensive Plan is Industrial.

The applicants have requested C-2 (General Commercial) zoning. Upon the adoption stage of the amendment process, a zoning ordinance establishing C-2 zoning will be considered.

The Planning and Zoning Board recommended approval of CPA-2002-06 based on the findings outlined in the agenda package.

- b. CPA-2002-07: A Comprehensive Plan Amendment to establish Commercial/Industrial land use on a 16.86-acre parcel and a 2.44-acre parcel located on the west side of Wickham Road, south of Lake Washington Road, and north of Aurora Road in Township 26, Range 37, Section 13. (Owner/Applicant/Representative - Spiegel Lease Corporation) (Owner – MIMA Real Estate, LLC) (Owner/Applicant - Dr. Joseph A. McClure) (Representative - Al O'Connell) (P&Z Board 9/5/2002)

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The properties are part of the Indian River Groves and Gardens Subdivision platted in 1928. The larger property was used as a motor sports racetrack (1/4 mile oval) but hasn't been used in many years. The larger property has remained vacant since it was last used as the racetrack. The smaller property is the site of a medical office building built in 1976.

The 16.86-acre Spiegel property and the 2.44-acre MIMA property are zoned BU-2 (Retail, Warehousing and Wholesale Commercial) by Brevard County. The vacant property abuts an existing single-family development (Turtle Mound Ranchettes) to the west zoned RR-1 (Rural Residential) by Brevard County, a single-family subdivision called Fairview Estates to the north, zoned EU-2 (Estate Use-Residential) by Brevard County, and to the south a developed warehouse facility now located in the city and a zoned M-1 (Light Industrial), and to the northeast a daycare center zoned BU-1 (General Retail and Commercial). Wickham Road forms the east boundary of both properties. The properties are contiguous to the city boundary by the frontage along Wickham Road and the industrial zoned property to the south. The county assigned Future Land Use designation is Community Commercial.

Based on comments by Brevard County staff, the county does not have concerns about the proposed annexation and land use. A previous condition of the Fairchild Drive abandonment and vacation approved by the county required a 40-foot buffer along the north property line, which includes the former 25-foot right-of-way. Melbourne's Comprehensive Plan will require a 50-foot buffer.

The requested land use is mixed use Commercial/Industrial for the Spiegel property and Commercial land use for the MIMA property. The existing county land use is Community Commercial. The advisory city land use adopted as part of the 1998 Comprehensive Plan is mixed use Commercial/Industrial. The proposed Commercial land use on the MIMA site is less intensive than the advisory land use and provides consistency with the Comprehensive Plan including the Future Land Use Element, Objective 1h and Objective 7a and the Recreation and Open Space Element, Objective 1e.

The proposed city land use and the existing county land use are very similar. The applicant for the Spiegel property indicates that they desire to develop warehouses on the property, or other uses now permitted in the existing county established BU-2 zoning district. Based on the value of the property, the Wickham frontage will most likely be developed for commercial uses. According to the Comprehensive Plan, a buffer will be required at the time of development between the commercial/industrial development and the residential development. A wetland now is located over much of the area where the buffer is required so little additional buffer will be required to comply with this requirement. The policy established in FLUE, Objective 6c exists to provide an extraordinary buffer between the property zoned M-1 or Commercial and the residentially zoned properties to the north and west. The buffer applied to the previously approved land use and zonings on the industrial properties to the south require a 50-foot setback. This area is reserved for vegetation, retention or other natural preservation/buffers.

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The Planning and Zoning Board recommended approval with the findings outlined in the agenda package.

- c. CPA-2002-08: A Comprehensive Plan Amendment to establish Industrial land use on two lots in the Industrial Plaza Subdivision, consisting of 3.89 acres, and establishing Low Density Residential land use on a 78±-acre parcel in the Suburbs of Eau Gallie Subdivision, totaling 82+ acres, located on the south side of Dow Road, west of West Drive and east of John Rodes Boulevard in Township 27, Range 36, Section 26. (Owner - M.S. Halpern) (Owner - Peter and Maria Link) (Owner - Arthur W. Sitrin, Trustee) (Applicant - R.J.P. Development, Inc.) (Representative - R.J.P. Development, Inc.) (P&Z Board 9/5/2002)

The Halpern property and Link property, at the southwest corner of West Drive and Dow Road and on the west side of West Drive, are platted lots consisting of a light industrial use and a vacant lot, respectively, on a total of 3.89 acres. The lots were platted as part of the Industrial Plaza Subdivision in 1985. The building on the Halpern property was constructed in 1997. The larger un-platted parcel consists of 78+ acres located to the southwest of the Halpern property and west of the Link property, and is vacant.

The Halpern, the Link, and the Sitrin properties are zoned IU (Light Industrial) by Brevard County. The site abuts an existing development to the southeast (Industrial Plaza, Unit 1 and Dow Central Park), a developed parcel used for light industrial uses and vacant property zoned IU to the south/southwest, and various industrial lots of the Industrial Plaza, Unit 1 Subdivision to the east (zoned IU by Brevard County). To the north across from Halpern Property is property zoned M-1 by the city and IU by Brevard County, which contains industrial buildings. The property located to the west of the Sitrin property across John Rodes Boulevard is zoned TR-3 (Mobile Home Park), which includes portions of the Lamp Lighter Mobile Home Park and IU with an industrial building. The Sitrin and Link properties are not now contiguous to the city boundary but the Halpern property is contiguous. The Link property is contiguous to the Halpern property, which makes the Sitrin property contiguous.

The adopted county land use is Planned Industrial on all three parcels. As mentioned above the Halpern property is developed with an 18,900 square foot industrial building while the Link and Sitrin properties are vacant. The Sitrin property is heavily wooded and contains hardwood wetlands dispersed throughout.

The applicant for the Halpern and Link properties is requesting the establishment of Industrial land use. The applicant for the 78-acre Sitrin property is requesting a Low Density Residential land use. The existing county land use is Planned Industrial. The advisory city land use adopted as part of the 1998 Comprehensive Plan is Industrial on all three properties. The proposed Low Density Residential land use on the Sitrin site is less intensive than the advisory land use.

The requested land use changes involve adopting an Industrial land use on the Halpern and Link properties and Low-Density Residential land use on the Sitrin property. The applicants would like to develop a single-family subdivision on the 78-acre Sitrin parcel.

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This would result in the need to change the land use from the current county planned Industrial land use to a Low-Density Residential land use. All the land use surrounding the 78-acre parcel is industrial, with the exception of the TR-3 zoning district northwest of the site. However, the sheer size of this parcel may well indicate that it is capable of sustaining a separate and distinct land use than the surrounding land uses. Also a large portion of the property contains wetlands including several isolated wetland pockets. Since the wetlands are dispersed throughout the property it may be less practical to devise an industrial design of a single development or industrial subdivision. A residential subdivision would have greater design flexibility since lots would be smaller and placed at angles to accommodate smaller structures and could be worked around wetland areas.

The property where the applicant is requesting the change is completely surrounded by properties which are developed in compliance with the existing land uses.

With a large tract of this size, it may be beneficial to provide residential use such as the proposed residential uses near employment centers. The residential use should also allow for development that will protect the environmental features of the property as well as provide sanitary sewer. If the property is developed in the unincorporated area it will be developed with septic tanks. Industrial uses are now permitted under the existing county zoning. According to Melbourne's Comprehensive Plan a buffer will be required at the time of development between the commercial/industrial development and the residential development. Wetlands are now located over some of the area where the buffer is required so little additional buffer will be required to comply with this requirement. In this case the buffer would be provided on the residential property since the industrial properties will predate the residential land use.

The policy established in the Future Land Use Element, Objective 6c exists to provide an extraordinary buffer between the property zoned Industrial or Commercial and residentially zoned properties. This buffer area is reserved for vegetation, retention or other natural preservation/buffers and will be required of the developers of the Sitrin property since the applicant is requesting this change in land use.

If the land use on the Sitrin property is approved, then the zoning change to a residential zoning classification would be necessary to develop the property for residential uses. The proposed project would likely reflect favorably on the city's budget, but would be more beneficial from a revenue stand point if it remained industrial and became part of the city. The property can be served by an extension of, and connection to, public infrastructure and can be provided with public services. The proposed land use change may fit well with the neighborhood because the residential parcel would be surrounded by employment based industrial development, and potentially place residences in close proximity to the job site. The proposed amendment could be considered consistent with the Comprehensive Plan as identified herein.

As part of the Joint Planning Agreement with the county, we have received some comments from county staff. The county commented that the larger parcel might serve as an effective transitional use between the existing adjacent industrial uses and residential uses. Light industrial uses similar to those allowed within the county's

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Business Park (PBP) zoning category are an example. The county's planning staff makes the contrast in the existing adjacent industrial uses and the city's proposed single-family uses. Additional comments include concerns about school capacity and traffic circulation.

The property is located in the Roy Allen assignment zone. Based on recent School Board data, Roy Allen now has a capacity of 868 students with last reported enrollment at 587. Junior high students could be assigned to Central Junior High and high school students to Eau Gallie High School. Central is now under capacity (2001/2002 data; 1,692 capacity with 1,191 students) and Eau Gallie High School is slightly under capacity (capacity of 2,172 with 2001/2002 enrollment of 2,126). The 78-acre parcel likely would provide between 280 and 320 home sites and perhaps even less with the amount of wetlands on the property. This would result in approximately 75 additional elementary school children and even less junior and senior high school students. Traffic generation for 280-320 unit subdivision likely will be much less than for 78 acres of industrial development.

The county is still compiling comments related to this proposal. Upon receiving these comments they will be made available to the Council. The proposed city land use and the existing county land use are very similar for the industrial properties. The proposed Residential land use is different than the county planned Industrial land use.

Again, with the proposed buffers the land use would be consistent.

The Planning and Zoning Board recommended approval based on the findings outlined in the agenda report.

Regarding item "a", Mrs. Poole asked if the residents of Live Oak Subdivision have been notified of the proposal. Mr. McCord said people within 500' were given notices and a portion of the 500' goes into Live Oak.

The applicant for item "b", Fred Spiegel, was available to answer questions.

Regarding item "c", Mrs. Poole said she is opposed to the mitigation of wetlands. Mr. McCord advised that it would be better to have the development in the City of Melbourne. He added that the land use won't impact wetlands mitigation.

Moved by E. Palmer/Hand for approval of Resolution No. 1783. Motion carried. Mrs. Poole voted nay because of the scrub jay issues associated with item "a" and wetland mitigation issues associated with item "c."

21. RESOLUTION NO. 1784: A resolution providing for an increase in the schedule of miscellaneous fees as authorized by Chapter 2, Section 2-216. (Building and Construction Advisory Committee 9/12/2002)

Mr. Gougelman read Resolution No. 1784 by title. Mr. Hill reviewed the agenda report.

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Moved by Walker/E. Palmer for approval of Resolution No. 1784. Motion carried unanimously.

22. RESOLUTION NO. 1785: A resolution revising the city's Investment Policy for the investment of surplus funds.

Attorney Gougelman read the resolution by title. Mr. Hill briefed Council.

Moved by E. Palmer/Poole for approval of Resolution No. 1785. Motion carried unanimously.

23. COUNCIL ACTION RE: Military Supplement Pay Extension.

From the agenda report: On October 9, 2001, Council approved six months of supplemental pay for those employees called to active military duty under Operation Enduring Freedom. On March 26, 2002 Council extended this supplemental pay for an additional six months and requested that this issue be revisited in September 2002. Three employees remain on active military duty.

The Personnel Director has surveyed other communities and recommends that Melbourne adopt a standard policy with regard to employees called to active duty pursuant to Operation Enduring Freedom. The survey indicates that the majority of cities surveyed, which do provide supplemental pay have also stipulated a specific time period from the date the employee is called to active duty.

Based on this survey the recommendation is for adoption of a policy to provide supplemental pay to employees for 18 months from the date they are called to active duty pertinent to the September 11 terrorist attacks. This will provide all employees called to serve the same benefit, regardless of the date they are ordered to duty, and will provide an equitable benefit to all employees so affected.

Mr. Hill confirmed for Mrs. Palmer that the city has approximately 15 employees that could be called to active duty. If they are called, they would receive the supplemental pay for up to 18 months.

A brief discussion followed regarding the affect this would have on a Council Member called to active duty.

Moved by E. Palmer/Contreras for approval of a policy providing that the City of Melbourne will provide supplemental military pay for up to 18 months from the date the employee is to report for duty under Operation Enduring Freedom. Motion carried unanimously.

24. COUNCIL ACTION RE: Pay and benefit adjustments for non-union employees for Fiscal Year 2002-2003.

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Funding is provided in the FY 2001-2002 budget for pay and benefit improvements for non-union employees. The following adjustments are proposed:

- a. Increase salaries and wages by 2.5% across-the-board for permanent part-time and full-time employees at steps A-T effective October 1, 2002.

All non-union employees who have worked with the city for at least six full months will be eligible to participate in the city's Step Pay Plan. Step raises will be processed on October 1 for these employees who meet performance standards.

- b. Increase the special pay positions of Maintenance Worker I (part-time), Custodian (part-time), and Equipment Operator I (part-time) to equal the pay of their counterpart full-time position found in the Laborers International Union pay schedule.

The approximate cost to the city for these wage increases is \$368,000.

Moved by Hand/E. Palmer for approval of a 2.5% across-the-board increase for non-union for permanent part-time and full-time employees effective October 1, 2002, and increase the special pay positions to equal the pay of their counterpart full-time positions found in the Laborers International Union pay schedule. Motion carried unanimously.

- 25. COUNCIL ACTION RE: Request for approval of contracts for property and casualty insurance renewals from various vendors.

The recommendation is for approval of the renewal of insurance premiums to the companies in the amounts as follows:

LINE OF COVERAGE	01-02 PREMIUM	02-03 PREMIUM	PERCENT INCREASE	INSURANCE COMPANIES
Premier Public Entity Package	\$414,500	\$580,000	39.93%	United Nat'l Ins. Co
Excess Property Coverage (to \$15 Million Value)	181,000	282,536	56.10%	Lloyds, First State First Specialty
Excess Property Coverage	118,500*	60,000**	N/A	Lloyds, First State First Specialty
Excess Work Comp	54,521	248,413	355.63%	Midwest Employers
Excess Liability	47,300	66,650	40.91%	United Nat'l Ins. Co
Claims Third Party Administrator	61,000	62,250	2.05%	Professional/Johns Eastern
Police/Fire Fighters AD&D	6,755	13,510	100.00%	Hartford Ins. Co.
Boiler & Machinery	6,756	7,863	16.39%	Travelers Ins. Co.
Total Premium/TPA Cost	\$890,332	\$1,321,222	48.39%	

\*Total Insurable Value

\*\*Maximum probable loss - \$25 million

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

26. COUNCIL ACTION RE: Board Appointments

- a. Downtown Architectural Review Board – two regular members

Moved by Poole/E. Palmer to reappoint David Bogenrief and Eric L. Lewis as regular members to the Downtown Architectural Review Board. Motion carried unanimously.  
(Terms: 10/1/2002 – 9/30/2005)

- b. Firefighters' Pension Plan Board of Trustees – one resident member

Moved by E. Palmer/Walker to reappoint Gary R. Ford as the resident member of the Firefighters' Pension Plan Board of Trustees. Motion carried unanimously. (10/1/2002 – 9/30/2004)

26.1 COUNCIL ACTION RE: Request to return Library Trust Funds to Brevard County Library Services Department

Mr. Hill reported that this is a request to return funds the city has been holding in trust for the Melbourne Library (\$52,287.98), the Eau Gallie Library (\$18,053.53) and the Constance Hodgson Library Trust (\$2,666.27) to the Brevard County Library Services Department. The city has been holding the funds in a fiduciary capacity for approximately 20 years with the understanding that the Library Board would request the funds as needed. No requests have been made for the past 10 years.

The city has been accounting for these funds in the Comprehensive Annual Financial Report (CAFR) and the funds are subject to review by our external auditors. When GASB Statement 34 is implemented in Fiscal Year 2003, these funds will not be part of the government wide financial statements for the CAFR and a reconciliation will need to be presented to identify the difference between the individual statements and the government wide statements.

Mr. Palmer asked if the funds can be used for or stipulated that they be used to repair the sign at the Eau Gallie Library. (Sign located near roadway vandalized; letters missing.) Mr. Hill said the city can call this to the attention of the Brevard County Library Services Department when the funds are returned.

Moved by C. Palmer/Hand for approval of the recommendation. Motion carried unanimously.

26.2 COUNCIL ACTION RE: Request by Council Member Poole\* to attend the Florida League of Cities Environment Quality Policy Committee Meeting at the Hyatt Regency Orlando International Airport on October 11

\*Mr. Palmer added his name to the request in order to attend the Intergovernmental Relations Policy Committee Meeting.

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Moved by Hand/Walker to approve the travel request for Council Members Ed Palmer and Pat Poole. Motion carried unanimously.

27. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Poole discussed her disappointment in the coquina wall being removed at the Melbourne Cemetery. Mr. Hill explained that the wall was crumbling and deteriorated. He added that the city has received comments from people who like the new fencing.

At the recommendation of Mr. Hill, Council agreed to place an item on the October 8 agenda regarding the process Council wishes to follow for the hiring of a new City Manager. Mr. Hill said he will contact several recruiting firms at the ICMA Conference next week and encourage them to submit information to City Council.

A brief discussion followed regarding Mr. Hill's decision to accept a position with the City of Frisco, Texas.

28. ADJOURNMENT

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

The meeting adjourned at 11:33 p.m.

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City Clerk – 10/8/2002

Approved by Council October 22, 2002