

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

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

1. Reverend Carol Glanton, Triumph 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:	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
	Suzanne Novak	Assistant City Attorney
	Cathleen A. Wysor	City Clerk
	Amy W. Elliott	Assistant City Manager
	Cindy Dittmer	Economic Development Administrator

Absent: John A. Buckley Mayor (out of town)

4. PROCLAMATIONS AND PRESENTATIONS

Vice Mayor Hand referenced the Certificates of Appreciation prepared for the City Code Review Committee, Section 1. The members include Randy Aloise, Roderick Conkle, Jeffrey Godwin and Mike Malone. The Section 1 members reviewed Chapter 8, Buildings and Building Regulations; Chapter 10, Community Planning and Development; Chapter 13.5, Franchises; Chapter 19, Licenses; Chapter 25, Signs and Advertising; Chapter 30, Taxation and Chapter 32, Utilities.

Additionally, Mrs. Hand reported that Dr. Victoria Vitale-Lewis, 1229 East Strawbridge Avenue, received the Beautification Award.

The Vice-Mayor recognized Boy Scout Troop 300 sponsored by the Eau Gallie United Methodist Church. The scouts are working towards their Communications Merit Badge. Also, Mrs. Hand welcomed Boy Scout Troop 380 from Holy Name of Jesus in Indialantic.

5. APPROVAL OF MINUTES – September 24, 2002 Regular Meeting

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

6. CITY MANAGER'S REPORT

Mr. Hill reminded Council that a special meeting will be conducted October 24 to select a

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

search firm for the new city Manager. He also referenced the form distributed that Council may wish to use in ranking the firms.

Mr. Hill referred to the memorandum, which indicates that Council Member Ed Palmer would like Council to reconsider city sponsorship of the Artworks 2002 event (denied by Council October 8).

Moved by Walker/E. Palmer to add this to the agenda as Item 23.1. Motion carried unanimously.

7. PUBLIC COMMENTS

Rico Jackson, REALTOR, 1209 Heritage Acres Boulevard, Rockledge, representing the property owner at 1945 Kennedy Street, asked Council to consider changing the property to its previous density of 21 units per acre. He noted that the property has a current density of six units per acre. Mr. Jackson reported that an investor is ready to redevelop the property.

Attorney Novak advised Council that Planning and Economic Development has not received an application for this change in density and zoning. Any such request would need to follow the normal process of consideration before the Planning & Zoning Board. Therefore, she noted that the issue is not right for Council to consider at this time.

Mr. Jackson said that Peggy Braz, Planning and Economic Development Director, advised him to make this appeal before Council. He added that he was not advised on how to proceed. Mr. Hill said that Planning and Economic Development will be asked to follow up on this request.

Additionally, Nicholas Rahal and Carolyn Boone, Rahal Real Estate, 1269 U. S. 1, Rockledge, spoke in support of the change in density.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2002-72: (Public Hearing/Second Reading) An ordinance amending Chapter 23, Retirement and Pensions, Article V, Firefighters' Pension Plan, to implement mandated minimum retirement benefits for firefighters. (First Reading 10/8/2002)

Attorney Novak read Ordinance No. 2002-72 by title. There were no comments from the public.

Moved by Poole/E. Palmer for approval of Ordinance No. 2002-72. The roll call vote was:

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

Nay: None

Motion carried unanimously.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

9. ORDINANCE NO. 2002-73: (Public Hearing/Second Reading) An ordinance amending Chapter 31, Traffic and Motor Vehicles, as recommended by the Code Review Committee, Section 4. (First Reading 10/8/2002)

Ms. Novak read the ordinance by title. There were no comments from the public.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2002-73. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2002-74: (Public Hearing/Second Reading) An ordinance amending Chapter 2 by establishing a new article, which adopts the City of Melbourne's list of permitted investments pursuant to the requirements of Section 218.415, Florida Statutes. (First Reading 10/8/2002)

Attorney Novak read the ordinance by title. There were no comments from the audience.

Moved by Contreras/Walker for approval of Ordinance No. 2002-74. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

11. COUNCIL ACTION RE: A request by Mr. Theodore H. Willing to return to Council regarding the Melbourne Housing Authority.

Vice Mayor Hand referenced the information distributed, which indicates that Mr. Willing has asked that this item be postponed until the November 12 Council meeting to allow time for Mayor Buckley to present the results of the survey taken at Ramshur Towers.

Moved by Poole/C. Palmer to postpone this item until the November 12 Council meeting.
Motion carried unanimously.

12. COUNCIL ACTION RE: Piggy-back contracts (two) with Mueller Service Company for Fire Hydrant Replacements, Project No. C-03300 - \$163,214.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

Mr. Hill reviewed the agenda report.

Moved by E. Palmer/Walker for approval of the piggy-back contracts with Mueller Service Co. in the total amount not to exceed \$163,214. Motion carried unanimously.

13. COUNCIL ACTION RE: Establishment of fund for Florida East Coast Railway Crossing replacement at Silver Palm Avenue.

Mr. Hill reviewed the agenda report.

Moved by C. Palmer/E. Palmer to approve funding of up to \$75,088 to FECR from Local Gas Tax 316 Funds. (\$30,000 is included in the 2002-03 operating budget for railroad crossing repair and the balance of \$45,088 is appropriated from 316 Unappropriated Fund Balance.)

Mr. Hill confirmed for Mr. Palmer that we have approximately one repair per year. Unfortunately, the city does not receive advance notice. Each repair performed should be good for 10 – 15 years unless the standards change.

The question was called. Motion carried unanimously.

14. CONSENT AGENDA:

Moved by E. Palmer/Contreras for approval of items “a” through “e” as recommended. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Purchase of eight police vehicles, McCotter Ford, Inc., Titusville, FL, Florida Sheriff’s Association Bid No. 02-10-0826 - \$158,484.
- b. Extension of contract to provide police uniforms and accessories, Harrison Uniforms, Orlando, FL (Orange County Sheriff’s Office Bid No. 5-00) - \$57,500.
- c. Piggy-back contract to Mueller Service Company for Fire Hydrant Refurbishment (Project No. E-03302) - \$49,950.
- d. Six-month blanket purchase order for phone service, Nextel, Orlando, FL - \$27,300.
- e. Purchase of automotive parts, supplies, and filters, Central Auto Parts, Inc., Melbourne, FL (unit price discounts established in City of Orlando Contract B-102-1616-02) - \$30,000.

Council convened as the Babcock Street Community Redevelopment Agency for consideration of Items 15 and 16.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

15. COUNCIL ACTION RE: Babcock Street Median and Landscape Improvements (Project No. 00611), William Turnbaugh Construction, West Melbourne, FL - *\$792,980.45.

*Total corrected to be \$790,079.55.

Mr. Hill reviewed the agenda report. This is a proposed construction contract award for the Babcock Street median and landscaping project. The project involves construction of a median on Babcock Street between Hibiscus Boulevard and NASA Boulevard. Also included in the project are sidewalks, crosswalks, and extensive landscaping with a well and irrigation system. Landscaping is in the medians and along both sides of the street.

The time for completion of the project is 240 calendar days. Staff and consultants reviewed the bid and determined that the unit prices are reasonable. Even though only one bid was received, this was a competitive bidding situation. The bidder, Turnbaugh Construction, has received many contracts from the city as low bidder. On those projects, the contractor completed the work in a very satisfactory and timely manner. Staff believes that this is a good bid for the work and has confidence that this contractor will perform well on the project.

The Babcock Street Community Redevelopment Agency Advisory Committee held two meetings to discuss the bid and budget shortfall. The members expressed how important it is to proceed with the entire project rather than trying to eliminate items to reduce the budget. The advisory committee recommended that revenue to be received in FY 2002-2003 be used to augment the budget for this project. The FY 2002-2003 budget indicates a reserve for future projects of \$106,821. If \$100,000 of this is used, and \$10,000 designated for contingency, an additional \$125,000 will be needed to fully fund the work. The committee further requested that the balance of needed funds be financed by borrowing from the General Fund (see Items 16 and 17).

Mrs. Walker asked if it is prudent to borrow the funds. Mr. Hill said the money would be borrowed from the investments of the General Fund. The proposal is to repay the funds at a rate of interest that exceeds the General Fund's investments. This move would be beneficial for the General Fund. As the Community Redevelopment Agency, Council needs to determine if it wishes to proceed. The advisory committee has indicated that this project is a priority.

Richard Ennis, chairman of the advisory committee, was present and available for questions.

Moved by E. Palmer/Contreras for award of the construction contract to William Turnbaugh Construction, Inc. in the amount of \$790,079.55. Motion carried unanimously.

16. COUNCIL ACTION RE: Approval of Loan Agreement (attachment to Resolution No.1787) for the Community Redevelopment Agency to borrow \$125,000 from the General Fund of the City of Melbourne for the Babcock Street median and landscape improvements project.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

Mr. Hill briefed Council. This is the loan agreement for the Community Redevelopment Agency to borrow \$125,000 from the General Fund investment funds of the City of Melbourne for the Babcock Street median and landscape improvement project. The loan would be paid back to the General Fund over a five-year period with annual revenues generated from the Babcock Street District. The General Fund would receive 1% over the amount generated by the city's regular investments.

Moved by Contreras/Walker for approval of the loan agreement for the Community Redevelopment Agency to borrow \$125,000 from the General Fund investment funds. Motion carried unanimously.

Council adjourned as the Babcock Street Community Redevelopment Agency and reconvened as the City Council.

17. RESOLUTION NO. 1787: A resolution authorizing a loan in an amount not to exceed \$125,000 from the General Fund of the City of Melbourne to the Community Redevelopment Agency for the Babcock Street Median and Landscape Improvements project.

Attorney Novak read Resolution No. 1787 by title.

Moved by E. Palmer/Contreras for approval of Resolution No. 1787.

Mrs. Palmer stated that she does not think it is a good idea to do the landscaping; however, since the decision has been made, she said we should get the job done.

The question was called. Motion carried unanimously.

18. RESOLUTION NO. 1788: A resolution increasing the Local Communications Services Tax rate.

Attorney Novak read the resolution by title.

From the agenda report: The Legislature created the Communications Services Tax to encompass the revenues previously received from various telecommunications providers. Because of the legislation and the process of adoption, the Communications Services Tax is a revenue source that staff has been concerned about over the last year. The proposed change is permitted under the state law enacting the tax to provide a rate to keep the revenue source "revenue neutral." This means that the expected revenue is the same under the new tax compared to the old series of taxes.

In June 2001, Council adopted Resolution No. 1697 establishing Melbourne's Communication Tax Rate. The established rate of 5.60% was intended to provide revenue neutrality by applying a rate for all communications services that would replace the local franchise fees and utility taxes levied on communication service providers and

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

was the initial maximum rate allowed by state law. Unfortunately, this rate did not provide Melbourne with the necessary revenues as intended. The city received \$4,273,986 for the fiscal year ending September 30, 2002, which was \$332,357 less than our estimate of \$4,606,343.

Florida Statute 202.20 provides local governments the capability of adopting an emergency rate increase resolution to adjust the rate of the local communications services tax upward to the extent necessary to make up for the shortfall in collections. Staff has determined that the adjusted rate should be 5.97% effective January 1, 2003 to recoup the shortfall based on estimated revenue projections allowed under the State Statute.

At the time the initial communications services tax rate was adopted, Melbourne also elected not to charge local permit fees to communications services providers, and as a result of the election, opted to levy a .12% tax on all communications services providers. As a result the total initial tax rate was 5.72%. Under the emergency rate increase provision, the total rate would be 6.09%.

At the end of one year following the effective date of the adjusted rate, staff will review the calculations to determine whether sufficient revenues have been received to make up the shortfall and whether the tax rate can be reduced.

Moved by E. Palmer/Walker for approval of Resolution No. 1788. Motion carried unanimously.

19. COUNCIL ACTION RE: City sponsorship of Halloween events.

From the agenda report: At the October 8 meeting, Mr. Donald Lindenberger expressed opposition to the city providing Halloween events. Mr. Lindenberger stated that Halloween is a demonic, paganistic ritual. The Leisure Services Department sponsors several "holiday" oriented events at city facilities, including Christmas, Easter, and Halloween. The effort is made to allow for safe and wholesome family events and activities.

A report from Leisure Services describing the city's Halloween events has been distributed to Council.

Donald Lindenberger, 508 S. Gardenia Drive, stated that he believes the city should stay neutral in providing a party, which will introduce demonic things to children. He asked the city to stop "Family Ghoul Night" until Council takes time to study the meaning of Halloween. Mr. Lindenberger explained that he is a bus driver for the school system and our children do not need any further demonic influence in their life. He added that there is nothing positive about celebrating Halloween; it is all about death, curses, witches and demonic things.

Mr. Lindenberger briefly discussed the history of Halloween.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

Mrs. Walker asked Mr. Lindenberger if he went “trick or treating” when he was a child. Mr. Lindenberger replied yes; however, he added that once you find out the truth, you will not want to be a part of it.

Mrs. Walker asked if he felt damned in anyway (by previously participating in Halloween). Mr. Lindenberger replied that he can’t explain within the time limit and reported that children are introduced to Satanism slowly.

Mrs. Poole referenced the last Council meeting and asked Mr. Lindenberger if he obtained an attorney. Mr. Lindenberger replied that he sought legal counsel; however, he learned that the city can proceed as long as it does not get into the actual worship. He stressed, however, that this does not mean that it is okay.

Mr. Lindenberger confirmed for Mrs. Poole that he has not appeared before the County Commission regarding this issue. Continuing, Mr. Lindenberger said that he does not understand why more pastors did not attend this meeting. He promised Council that there will be repercussions; the safety of our children is at stake. The city is opening the door for the devil to come into the city.

A brief discussion continued.

Mrs. Poole said that Halloween events are sponsored by the city in order to ensure that our children are in a protected place. She added that Halloween is one of the happiest events children participate in; they love to dress up. Mrs. Poole noted that she has never associated Satanism with Halloween and added that she does not believe the city needs to take any action.

Mrs. Hand referenced the information (from her pastor) distributed to Council regarding the history of Halloween. She also noted that Ms. Karen Harshaw from the Downtown Merchants Association distributed information on the history and customs of Halloween.

Mrs. Hand noted that a recent magazine article indicates that Halloween is one of the most popular holidays in America. Last year Americans spent \$6.9 billion in decorations, costumes and parties. She agreed that some people may practice this as part of their religion, but Christians do not. Rather, children dress up, trick or treat, bob for apples, etc. She commented that in her church, this is called All Hallows Eve.

Mrs. Palmer referenced the fliers prepared by Leisure Services for the various Halloween events. She noted that some are very neutral, including the Harvest Pumpkin party at Lipscomb Park Community Center and the Harvest Fest at the Grant Street Community Center. She pointed out that the flier for Family Ghou! Night at Eau Gallie Civic Center uses witches, bats, ghosts, and skeletons and the Halloween Sleepover at Crane Community Center uses ghosts, spiders etc. Mrs. Palmer recommended that the city stay with the uplifting themes followed by Grant Street and Lipscomb Park. The overall purpose is to provide a safe alternative for children on Halloween.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

Moved by C. Palmer to direct Mary Ann Kise (Leisure Services Director) to go forward with neutral fall family themes next year and leave the events as is this year.

Mr. Palmer said he respects Mr. Lindenberger's opinion; however, he does not agree with it. Halloween, fall festival, whatever is a time for small children to have a good time with their parents. He finds no demonic or anti-religious messages in the events planned by the city.

Mrs. Palmer said whatever the event is called, it should be neutral without ghosts, skeletons and references to death. She repeated that the fliers from Grant Street and Lipscomb Park are neutral.

Mrs. Poole stated that she does not feel the city should take any action based on the request of one person. She added that if this were really important to the people, a large group would be in attendance at the meeting.

At this point, Mrs. Hand seconded the motion. (Motion is now on the floor.)

Discussion continued regarding the history of Halloween.

Mrs. Hand said the City Council wants to see that our children are safe, off the streets and having a good time. She agreed with changing the events to family type festivals. Mr. Hill pointed out that in looking at the Leisure Services programs, that is clearly what staff is attempting to do. If the feeling of Council is to avoid certain words and clipart images, we could do that. However, the city currently provides a variety of activities that are value neutral and that do not promote any type of belief.

Mrs. Palmer asked why the themes are different at the Lipscomb and Grant Street centers. Ms. Kise said that each center uses its creativity to plan the event. She added that the events planned for Lipscomb and Grant Street are probably the same activities that will be held at the Eau Gallie Civic Center. Staff's concern is that children have a safe and fun place to go.

The question was called. The vote was:

Aye: Walker, C. Palmer and Hand

Nay: Contreras, E. Palmer and Poole

Motion failed.

20. FINAL PLAT APPROVAL SD-2002-04B (PINE CREEK SUBDIVISION, PHASE TWO): (Public Hearing) A request for final plat approval for Pine Creek Subdivision, Phase Two, on a 9.04-acre portion of a 42.07-acre parcel, zoned R-1B (Single-Family Residential), located north of Eber Road and east of Dairy Road. (Owner - 127th Avenue Associates,

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

Ltd., Courtelis Company its General Partner) (Applicant - Elias Vassilaros) (Representative - Hassan Kamal, BSE Consultants, Inc.)

Ms. Dittmer briefed Council. On November 13, 2001, Council approved the latest preliminary plat for Pine Creek Subdivision with a total of 189 lots and on March 12, 2002 Council approved the final plat for Pine Creek, Phase One, which included 42 of the 189 lots.

The second phase will contain 49 lots. The first phase and this second phase of the four phases of the subdivision are consistent with the approved preliminary plat. The existing platted private streets will be extended from the Phase One streets. A retention pond was constructed with Phase One of the subdivision. The pond outfalls into the drainage right-of-way to the north, through an existing easement that overlaps a portion of proposed Lot 41, Block A and Lot 19, Block C.

Future phases of the subdivision will be constructed/platted on the vacant property to the west. Tracts H and J will be used for landscaping and as a retention tract access way. Tract L will be for the private streets as it is in Phase One. All tracts will be owned and maintained by the homeowners' association.

When Phase One was constructed, the land where this and future phases are to be located was cleared, filled and graded, so all that remains is for the installation of utilities, streets and street drainage system. The applicant obtained the necessary permits from the Florida Fish and Wildlife Conservation Commission to take gopher tortoises before the initial clearing began. This was a requirement of preliminary plat approval. The construction plans already have been approved for Phase Two. The applicant proposes to bond (performance bond) the project as permitted by City Code, Chapter 29, Section 29-5(c)(4) c. Construction is anticipated to take from 30-60 days.

The proposed final plat is consistent with the City Code and the approved preliminary plat. The plat will continue the logical extension of streets, utilities and the lot numbering scheme utilized in the Phase One plat. The Planning and Zoning Board recommended approval of SD-2001-04B, Final Plat for Pine Creek, Phase Two Subdivision, consisting of a two-sheet plan, prepared by BSE Consultants, Inc., of Melbourne, Florida, dated July 25, 2002, with a revision date of September 25, 2002, with the findings outlined in the agenda package and the following conditions:

- a. Any change to the final plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the final plat includes, but is not limited to: 1) any increase in the number of lots; 2) a change to the street network; or 3) a change in the ownership status of the private streets.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

- b. The applicant shall provide a form of surety equal to 110 percent of the construction cost as required by City Code, Chapter 29, Section 29-5 (c) (4) c. Such surety shall be in form acceptable to the City Manager and City Attorney.
- c. Provide an amendment to the Stormwater Maintenance Agreement in form and substance acceptable to the City Manager and City Attorney.
- d. Provide a recent signed original title opinion in accordance with City Code.
- e. Provide easements for a temporary cul-de-sac at the west end of Indian Oaks Drive.
- f. Provide warranty deeds conveying the tracts to the homeowners' association.
- g. Provide a bill of sale for the water and sewer lines and an easement for the water and sewer lines within the rights-of-way.

Dani Hoyt, BSE Consultants, discussed her knowledge about the history of ownership of the property in response to Mrs. Poole. She confirmed that there are four phases and that this is Phase Two. Ms. Hoyt agreed with the conditions as proposed.

Moved by C. Palmer/E. Palmer for approval of the final plat (SD-2002-04B) for Pine Creek Subdivision, Phase Two, subject to the proposed stipulations.

Mrs. Poole said she cannot possibly support R-1B zoning with 50' lots, especially for a 42.07-acre parcel. She added that she believes we are crowding everything to the advantage of the developers and to the disadvantage of the rest of the city.

The question was called. Motion carried. Mrs. Poole voted nay.

Recessed: 9:05 p.m.
Reconvened: 9:19 p.m.

21. ORDINANCE NO. 2002-75: (Public Hearing/First Reading) A proposed ordinance to abandon and vacate a 25-foot wide right-of-way located south of a 50-foot wide FDOT drainage right-of-way in the Northwest ¼ of Township 27 South, Range 37 East, Section 23, Brevard County, Florida being part of Indian River Groves and Gardens as recorded in Brevard County Florida.

Mr. Hill briefed Council. The right-of-way is 25-feet wide as shown on the 1926 plat of the Indian River Groves and Gardens Subdivision, which is located between I-95 and John Rodes Boulevard north of Eau Gallie Boulevard. The subject segment of right-of-way is about 1,595 feet west of John Rodes Boulevard. It can be accessed by a similar platted 25-foot right-of-way that runs east-west for that distance. The area is unimproved and undeveloped.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

The applicant, Beville Outlaw, owns abutting property that he wishes to develop. The subject segment of right-of-way is approximately 255.12 feet long and could not serve for construction of any useful road due to its dimensions and remote location.

Notices were sent to all utility companies and city departments. There were no objections except for FDOT that did not want a portion of the originally platted right-of-way that overlaps an FDOT drainage right-of-way easement to be vacated. Staff's recommendation excludes that portion.

Attorney Novak read Ordinance No. 2002-75 by title. There were no comments from the public.

Moved by Walker/E. Palmer for approval of Ordinance No. 2002-75. Motion carried unanimously.

22. COUNCIL ACTION RE: Legal Services agreement with Mr. Andrew Hament for labor matters.

From the agenda report: Mr. Andrew Hament has served as the city's labor attorney for a number of years. He has requested an adjustment to his compensation rate. Mr. Hament also advised that he is no longer with Holland & Knight LLP and has joined Gray, Harris, & Robinson, P.A.

There are two issues for City Council consideration:

Compensation:

Mr. Hament is requesting a compensation adjustment to \$175 per hour for partners and \$150 per hour for associates. His current rate is \$125 per hour for partners and \$110 per hour for associates. This compensation rate is far below his normal rate, which is usually in the \$225 to \$250 per hour range. Mr. Hament has never received an increased rate of compensation.

The City Attorney has been negotiating with Mr. Hament. A salary survey of the rates paid by other municipalities for labor counsel was conducted. That survey is included in the agenda package. It reveals that the standard compensation rate for labor counsel is currently in the \$150 per hour range and it appears that rate is beginning to increase. As an example of the outer extreme, West Melbourne currently pays \$245 per hour as a straight rate for all labor attorneys, whether partners or associates.

The City Attorney recommends a 3-step pay increase as follows:

- Effective November 1, 2002, labor counsel rates shall be \$150 for partners and \$125 for associates.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

- Effective October 1, 2003, labor counsel rates shall be \$165 for partners and \$135 for associates.
- Effective April 1, 2004, labor counsel rates shall be \$175 for partners and \$150 for associates.

There will be no charges for photographic copies, computer research, and similar types of charges and travel will be compensated pursuant to the standard City of Melbourne/State of Florida rates.

Potential conflict:

Mr. Hament's association with Gray, Harris & Robinson, P.A. raises a potential for an ethical conflict because Mr. Hament's law firm also represents clients adverse to the City of Melbourne. Phil Nohrr and Jack Kirschenbaum are also partners with Gray Harris & Robinson, PA. These individuals periodically appear before the city on behalf of zoning clients.

Under the Canons of Ethics of the Florida Bar, potential conflicts of this nature may be waived if both clients affected waive the conflict of interest.

Staff believes it is in the best interest of the city to waive the conflict. Attorneys Hament, Nohrr, and Kirschenbaum all deal in different areas of legal practice. Any matter referred to Mr. Hament or one of his associates would be a labor matter, which would never be acted upon by either Phil Nohrr or Jack Kirschenbaum.

Moved by Poole/E. Palmer for approval of the contract for services with Mr. Andrew Hament as proposed. Motion carried unanimously.

23. COUNCIL ACTION RE: Board Appointments

- a. Beautification and Environmental Advisory Committee - appointment of three members-at-large

Moved by C. Palmer/E. Palmer to reappoint Carl Fels, Patty Goffinet and Alexis Johnsten. Motion carried unanimously. (Three-year terms through November 9, 2005)

- b. Building and Construction Advisory Committee - appointment of one member

Mrs. Poole nominated Garrett Pomichter and Mrs. Hand nominated Lee Bohlmann.

Moved by Walker/Contreras to close the nominations. Motion carried unanimously. The vote was:

Pomichter: Contreras, Poole and Walker

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

Bohlmann: E. Palmer, C. Palmer and Hand

Tie vote.

Moved by E. Palmer/C. Palmer to postpone this item until the next meeting to allow for a full Council to be present. Motion carried unanimously.

c. Golf Courses Advisory Board - appointment of two regular members

Moved by E. Palmer/C. Palmer to reappoint Jim Cates. Motion carried unanimously.
(Three-year term through November 8, 2005)

Mrs. Poole nominated William McCarty.

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

Vice Mayor Hand asked for all members in favor of Mr. McCarty to say aye. Council unanimously voted aye in favor of appointing Mr. McCarty. (Unexpired term plus three-year term through November 8, 2005)

Added to the agenda:

23.1 COUNCIL ACTION RE: Reconsideration of the request by Artworks 2002 for co-sponsorship of Artworks 2002 in Downtown Eau Gallie, November 23-24.

Attorney Novak noted that a motion to reconsider must take place during the same meeting. The action being requested is to “rescind” action taken at the previous Council meeting.

Moved by E. Palmer/Contreras to rescind the motion on (funding Artworks 2002 from) the Eau Gallie Redevelopment Fund. Motion carried. Mrs. Poole voted nay.

Mr. Hill referenced the additional information distributed to Council on the Eau Gallie Redevelopment District budget. The current budget has \$2,500 of available funds under operating supplies not designated for any specific expenditure. Additionally, new valuations provided by the Property Appraiser indicate that the revenue for Eau Gallie will increase by approximately \$3,400.

At this point, Council convened as the Eau Gallie Riverfront Community Redevelopment Agency.

Mr. Palmer said Council was previously notified that due to lack of funds, the request would have to be denied. However, later information shows that \$19,200 will remain in the fund at the end of Fiscal Year 2001-2002. Also, additional funds will be received due to new valuations. Therefore, funding is available to support Artworks 2002.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

Moved by E. Palmer/Hand to support (Artworks 2002) by providing the monies requested.

Mrs. Poole expressed concern with taking money from the Eau Gallie Redevelopment Fund because projects will be coming forward that need matching funds. Additionally, the redevelopment fund is committed for the next 17 years to repay a loan to the General Fund. She added that Council gave \$9,225 to the Brevard Museum of Art and Science; therefore, that organization should provide the \$1,000 for the student artist program. She expressed disappointment in the advisory committee expecting the city to pay for whatever funds it wants.

Continuing, Mrs. Poole said that Council must make the best decisions for the city – not just one district. She referenced information from the Artworks 2002 event and reported that each of the 110 artists will pay \$95 plus tax. The event also has corporate sponsors. She pointed out that the city has a procedure in place to fund non-profit organizations and each organization is supposed to apply at the same time. She concluded by saying that the profits from this event will go to the Eau Gallie merchants; therefore, funding should not come from the redevelopment fund.

Mr. Palmer said Artworks will bring a lot of visitors into the Eau Gallie area; it will be a tremendous boost. He noted that since there are adequate funds in the redevelopment fund, the city should support this. He clarified that his motion is to provide \$2,300 in funds (\$1,000 for student artist recognition program and \$1,300 for city services.)

The question was called. Motion carried. Mrs. Poole voted nay.

Council adjourned as the CRA and reconvened as the City Council.

24. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Palmer announced that the plans for the bandshell proposed for the Memorial Park are complete. Frazier Engineering donated its services for the plans.

Mrs. Poole referenced a letter from Jackie Lepper regarding “brown water” at her home and asked if the city can persuade the contractor to start moving on this project. (Turnbaugh Construction awarded contract to replace deteriorated lines on Goff Place; however, contractor delayed and work has not started.)

Mr. Hill said staff has communicated to Ms. Lepper that the contractor will be held accountable to perform within the contract date. We have stressed with the contractor that we want the work to move forward quickly.

Mrs. Poole referenced the entrance sign to the Booker T. Washington neighborhood and said that it appears as if it is the entrance to the Eau Gallie Cemetery. She suggested the sign be used as the cemetery entrance and donations be sought for a new Booker T. Washington neighborhood sign.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
OCTOBER 22, 2002

Mr. Contreras asked for an update on compensation/departure issues regarding Mr. Hill. He referenced sick time, vacation leave, etc.

Mrs. Poole reported that the minutes from the Downtown Redevelopment Committee indicate that a traffic engineer will need to evaluate the removal of the traffic signals in Downtown Melbourne. The cost for the traffic engineer is estimated at \$6,600 and she noted this is a high amount to take from the redevelopment funds. Therefore, she recommended that the lights remain in place and that the city not waste money to hire a traffic engineer.

Mr. Palmer confirmed for Mrs. Poole that he will speak to Jim Johnson regarding repair of the water/sewer lines in Trailer Haven.

25. ADJOURNMENT

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

The meeting adjourned at 9:59 p.m.

City Clerk – 10/31/2002

Approved by Council November 12, 2002