

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 14, 2003

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. Reverend Pastor Edie Martinez, New Beginnings Worship Center, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Richard Contreras	Vice Mayor, 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
	Loretta Isenberg-Hand	Council Member, District 6
	Amy W. Elliott	Acting City Manager
	Paul R. Gougelman, III	City Attorney
	Cathy L. Baker	Assistant City Clerk
	Peggy Braz	Planning & Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented a Beautification Award to Theresa Snell, Assistant Manager, Sonic Drive-In, 4011 N. Wickham Road.

5. APPROVAL OF MINUTES – December 10, 2002 Special Meeting, December 12, 2002 Special Meeting and December 17, 2002 Regular Meeting

Moved by Walker/Hand for approval. Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mayor Buckley referenced the memoranda request to add two items to the agenda.

Moved by C. Palmer/E. Palmer to add items 22.1 and 22.2 to the agenda. Motion carried unanimously.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2002-85: (Second Reading/Public Hearing) An ordinance amending the non-exclusive Natural Gas Franchise between the City of Melbourne and NUI Utilities, Inc., operating locally through NUI City Gas Company of Florida, revising the description of revenues to which franchise fees are applied. (First Reading December 17, 2002)

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Attorney Gougelman read Ordinance No. 2002-85 by title. There were no comments from the public.

Moved by Hand/Poole for approval of Ordinance No. 2002-85. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

9. COUNCIL ACTION RE: Construction contract for installation of streetlights in Downtown Melbourne, American Signalization & Lighting, Inc., Jacksonville, FL - \$159,000.

Mrs. Elliott reviewed the agenda report.

Moved by Contreras/E. Palmer for approval of the contract with American Signalization & Lighting, Inc. in the amount of \$159,000. Motion carried unanimously.

10. COUNCIL ACTION RE: Amendment No. 3 to contract with Outlaw & Jones Engineers, Inc. for design of waterline relocations on South Patrick Drive - \$154,500.

Mrs. Elliott reviewed the agenda report.

Moved by E. Palmer/Hand for approval of Amendment No. 3 to Outlaw & Jones Engineers, Inc. contract for design of waterline relocations on South Patrick Drive in the amount of \$154,500. Motion carried unanimously.

11. COUNCIL ACTION RE: Construction contract for paving Dove Street and installation of new waterline, Doug Connor, Inc., Melbourne, FL - \$148,893.50.

Mrs. Elliott reviewed the agenda report.

Responding to Mrs. Walker, Mrs. Elliott advised that there is \$205,000 in the Booker T. Washington Revitalization Account.

Moved by Walker/C. Palmer for approval of the contract with Doug Connor, Inc. in the amount of \$148,893.50. Motion carried unanimously.

Mr. Palmer asked why Booker T. Washington funds are proposed and whether the transfer is temporary. Howard Ralls, City Engineer, stated this is the only source of funding. Any remaining funds would be returned to the Booker T. Washington Revitalization Account.

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Moved by Hand/E. Palmer for approval of the transfer of \$91,783.50 from the Booker T. Washington Revitalization Account for use on this project to supplement the \$72,000 already designated for this project. Motion carried unanimously.

12. COUNCIL ACTION RE: Construction contract for installation of a water main on Lake Washington Road, Underground Solutions, Inc., Haines City, FL - \$110,899.97

Mrs. Elliott briefed Council on this item.

Moved by E. Palmer/Poole for approval of the construction contract with Underground Solutions, Inc. in the amount of \$110,899.97. Motion carried unanimously.

Moved by Hand/E. Palmer for approval of a transfer of \$94,312.71 from Project C03314, Index 763143, eliminate in-flow and infiltration in the wastewater collection system at Lift Station No. 6, to this project's budget. Motion carried unanimously.

13. CONSENT AGENDA:

Moved by Contreras/C. Palmer for approval of 13 (a) through (m) as recommended. Motion carried unanimously.

- a. Purchase of eight vehicles for several departments from four vendors as listed in the agenda package - total price \$193,152.
- b. Purchase of a 2002 Ford 6640 Diesel Tractor with an Alamo 20', nine-inch, three gang flail mower, Alamo Sales Corporation, Seguin, Texas - \$59,989.
- c. Chemically remove existing floor coatings/sealers and apply new coating and floor markings at the Fleet Management Facility, Toole Floor Coating Company, Inc., Albany, Georgia - \$36,227.52.
- d. Supplement No. 133 to the Continuing Consultant Contract for Utility Relocations to support NASA Boulevard realignment at Wickham Road, Project #C03318, \$34,700.
- e. Purchase of 30 sets of Morning Pride protective gear, Fisher Safety, Tampa, Florida - \$32,250.
- f. Purchase of a 2003 Ford Explorer XLT, McCotter Ford, Titusville, Florida - \$22,493, and approval of a budget transfer from General Fund Contingency to Account No. 080002-64000.
- g. Purchase of two Bullard T3 Imagers (Thermal Imaging Cameras), Axis Fire Supply, Inc., Jacksonville, Florida - \$18,400.
- h. Change Order No. 2 to Jobear/Warden Construction, Inc. for Yacht Basin and Eau Gallie Baffle Boxes (Young Street and Stewart Road), Project No. 02904 - \$2,775.

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- i. Amendment No. 1 to Task Order No. 3 (application programming) of CH2MHill's Phase 1 WTP Contract in the lump sum amount of \$2,017.26.
  - j. Approval of proposal submitted by Indian River National Bank to purchase the Golf Courses Revenue Bonds, Series 2003 in the maximum principal amount of \$385,000 at an annual fixed interest rate of 4.29% to be paid over 10 years.
  - k. Joint Participation Agreement (JPA) with Florida Department of Transportation for funding for baffle box.
  - l. RESOLUTION NO. 1801: Authorizing the City Manager to submit an application to the Department of Community Affairs for the FY 2003-2004 cycle of the Emergency Management Preparedness and Assistance (EMPA) Trust Fund for training expenses related to establishing a technical rescue team.
  - m. RESOLUTION NO. 1802: Authorizing the City Manager to submit a grant application to the State of Florida Department of Health and Rehabilitative Services, Office of Emergency Medical Service (EMS) for EMS Matching Grant Funds for continuous positive airway pressure ventilation devices.
14. ORDINANCE NO. 2003-01: (First Reading) An ordinance providing for the repeal of Sections 31-90 through 31-95 (Vehicle Impound Ordinance) of Chapter 31, Code of Ordinances.

Attorney Gougelman read Ordinance No. 2003-01 by title.

From the agenda report: In September 1999 Council adopted Ordinance No. 99-33 (Vehicle Impound Ordinance). The purpose was to reduce drug and prostitution related complaints and increase drug and prostitution related arrests.

The Police Department recently analyzed the effectiveness of the ordinance and whether it has had an impact on reducing specified criminal activity. The review indicates that drug and prostitution complaints have continued to increase while drug arrests have remained relatively constant since 2000. There has been a decrease in prostitution arrests; however, that has been attributed to a decrease in anti-prostitution details by the Police Department.

In addition to not meeting the intended purpose, the ordinance has been extremely labor intensive. As a result, staff recommended that the Vehicle Impound Ordinance be repealed.

Moved by C. Palmer/Walker for approval of Ordinance No. 2003-01.

Council Member Ed Palmer discussed the Vehicle Impound Summary information provided to Council in June 2002. He noted that 58% of the contacts listed in the Summary have been for cocaine/crack cocaine. It may be labor intensive to administer; however, it is doing some good. He also pointed out that the Police Department has not been doing as many prostitution details. Some people may think the ordinance is not working, but he believes it is reducing drug usage and having a direct impact on prostitution.

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Mr. Palmer recommended that the ordinance not be rescinded. He strongly encouraged the Police Department to get more involved in the use of the ordinance.

Council Member Cheryl Palmer stated she appreciates Mr. Palmer's comments. The purpose of this ordinance was to reduce drugs and prostitution with more arrests. However, in looking at this data, complaints are increasing, and arrests are not. She interprets Major Short's report that the man-hours used to implement this ordinance could better serve the Eau Gallie area on drug and prostitution details.

Major John Short, Melbourne Police Department, discussed his report and explained that administration of the ordinance is extremely intensive and requires staffing of the Police Department, City Clerk's office, and City Attorney's office.

Mrs. Palmer asked, with regard to the ultimate goal of reducing drug and prostitution in the Eau Gallie area, whether the Police Department's hours could be used better. And, if this ordinance is rescinded, whether the same level of drug and prostitution enforcement in the area would remain. Major Short responded that administration of this ordinance takes away from the use of police officers. Often three to four police officers are required in a vehicle seizure. He pointed out that the Police Department would continue to arrest and punish offenders.

Mr. Palmer discussed the prostitution and drug problem in the Eau Gallie area. He said if the ordinance is eliminated, the perception will be that the Police Department cares more about use of its time than taking care of drug and prostitution problems. He stressed that the ordinance is doing more than nothing at all.

Acting Chief Jim Reynolds stated that the Police Department will continue to do enforcement. The ordinance is only a tool once the arrest has been made; it does not create opportunities in and of itself.

Chief Reynolds pointed out that most of the impounded vehicles are old, junk cars. A lot of the drug users drive junk cars that they don't care about abandoning; 20% of the impounded vehicles are abandoned by the owner because they won't pay the \$500 to get the vehicle back. This is a lengthy process that affects several departments. The officer time is negligible; the biggest time spent is after the fact.

Following a brief discussion about enforcement activities and decreased special details, Chief Reynolds stated that, ordinance or no ordinance, he will work closely with his supervisors to implement more activities throughout the City. He pointed out that there has been some realignment of personnel. He is looking at more realignment and reorganization. He assured Council he will work on this and it will have high priority.

Mrs. Palmer referenced the excessive patrol officer hours needed to enforce this ordinance and asked whether rescinding this ordinance would free officers to make more stops within the Eau Gallie area. Chief Reynolds responded no, and added that better direction of the officers would be more effective. The majority of time spent on this ordinance is after the arrest has been made and the vehicle has been impounded. The majority of the time is spent by other City staff to administer the ordinance.

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Mrs. Hand asked for Attorney Gougelman's opinion. Mr. Gougelman responded that the legality of the ordinance continues to be a concern. There has been no direct challenge to the City; however, in Miami there are three cases in the Appellate Court questioning the constitutionality of the vehicle impound type statute.

Continuing, Mr. Gougelman stated that another concern is the use of staff time, which includes Assistant City Attorney Suzanne Novak. She must prosecute each case, and she spends a lot of time on this. However, City employees are paid a salary, and these resources should be used as Council directs. The question remains whether Council believes this is a program that is worth the cost and is achieving the result that Council wants.

Mrs. Poole stated that Eau Gallie is not the only area with this problem – it is city-wide. The ordinance is taking time needed for other important duties; therefore, she supports the recommendation.

Mayor Buckley stated that he recommends rescinding the ordinance. Council has the option, if things worsen as a result of rescinding the ordinance, to reinstitute the ordinance. He stated Council should give the Chief an opportunity to emphasize the prostitution coverage a little more and the time needed to work on this.

Mr. Palmer pointed out that the ordinance is enforced city-wide and provides a tool that cuts down on the drug use in Melbourne and Brevard County.

The question was called. The roll call vote was:

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

Nay: E. Palmer

Motion carried.

15. ORDINANCE NO. 2003-02 (CU-2002-16/SP-2002-25/TOYOTA/LEXUS OF MELBOURNE): (Public Hearing/First Reading) An ordinance granting a conditional use to construct a parking lot on five lots and site plan approval on 1.41 acres zoned R-P (Residential Professional), located on the north side of Brevard Drive, west of Harbor City Boulevard (U.S. 1), east of North Babcock Street (Owner – John Harold Davis and Juanita Davis, with contract to purchase by Kevin Brodsky) (Applicant – Buchanan Farms, Inc. and 198, Inc.) (Representative – Scott Glaubitz, B.S.E. Consultants, and Craig Suman, Holeman-Suman Architects) (Planning and Zoning Board – December 5, 2002)

Mr. Gougelman read the ordinance by title. Mrs. Braz briefed Council on this item.

The Planning and Zoning Board recommended approval of CU-2002-16 with the findings in the Planning and Zoning Board Memorandum and the following conditions:

- a. The conditional use shall be consistent with the one-page site plan for Toyota/Lexus of Melbourne Parking Lot Expansion, consisting of a one-page plan prepared by

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B.S.E. Consultants, Inc. of Melbourne, Florida, with project number 10388.10 dated 11/12/02 with revision date of 12/02/02.

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

- b. The parking lot shall only be used for employee parking.
- c. No chain link fence shall be permitted between the street and parking lot or along the west or north property boundary.
- d. Provide a pedestrian walkway from the easterly portion of the employee parking lot to the parking lot/storage lot to the east to provide a direct pedestrian connection to the principal use.

Mr. Palmer reported he received a message on his answering machine from Harold Davis requesting support of this request. Council Members C. Palmer, Walker and Poole, Vice Mayor Contreras and Mayor Buckley also reported receiving a similar call from Mr. Davis.

Mrs. Poole questioned enforcement of stipulation “b” and asked if the applicant would utilize stickers for employee parking. Mrs. Braz stated that would be a question for the applicant; however, this is a very visible area. If a car carrier were to pull into the employee parking lot, the neighbors would probably report it to the City.

Scott Glaubitz, BSE Consultants, applicant’s representative, agreed with the stipulations.

There was a brief discussion regarding the number of employees at the dealership, whether the employee vehicles would have some type of identifying sticker, and enforcement of the employee parking only stipulation.

Mayor Buckley asked Mr. Glaubitz to be prepared at second reading to state whether the applicant would be willing to provide stickers for employee vehicles.

Moved by E. Palmer/Poole for approval of Ordinance No. 2003-02. Motion carried unanimously.

Recessed: 8:49 p.m.  
Reconvened: 9:05 p.m.

- 16. SITE PLAN APPROVAL (SP-2002-23/RIVERWALK CLUB VILLAS AND TOWNHOMES): A request for site plan approval to develop a 168-unit multiple-family/ townhouse complex on a 14.51-acre parcel zoned R-2 (One-, Two-, and Multiple-Family Residential), located on the

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north side of Eau Gallie Boulevard, west of Commodore Boulevard (Stewart Road). (Owner – Riverwalk Limited Partnership) (Applicant – Raymond Tompkins, Riverwalk Limited Partnership) (Representative – Vaheed B. Teimouri) (Planning and Zoning Board – December 19, 2002)

Mrs. Braz briefed Council on the item.

The Planning and Zoning Board recommended approval of the site plan for Riverwalk Club Villas and Townhomes consisting of a one-page plan prepared by Teimouri and Associates, Inc., of Melbourne, Florida, with Project Number 2002-109, dated October 22, 2002, with final revision date of December 5, 2002, with the findings contained in the Planning and Zoning Board Memorandum and the following conditions:

- a. Any change to the site plan will require re-evaluation of the site plan by the Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of 5% of the open space or vegetative areas on site; 2) a increase by more than 10 units as shown on the site plan; or 3) an increase in building size, height, or setbacks, which is less than the minimum setbacks required by Code.

- b. All hardwood trees including scrub oaks of less than 4" caliber, shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve trees.

Initially, trees shall only be removed for driveways, drainage facilities, and paved parking spaces and aisles. Trees in the footprint of the structure shall be removed only in conjunction with a building permit. All trees to be removed shall be identified by Code Enforcement personnel and an evaluation shall be made to determine the possibility of saving hardwood trees including scrub oaks. Trees and scrub oaks to be preserved must be protected by barricades placed at the drip line during construction. All invasive non-native vegetation shall be removed from the site including any within the wetland areas and the drainage easement. A natural existing native-vegetation buffer 25 feet in width along the length of River Road right-of-way and the east shore of the Eau Gallie River shall be preserved.

- c. The applicant shall obtain appropriate environmental permits from the Florida Fish and Wildlife Conservation Commission to relocate or take gopher tortoises. Should threatened or endangered species be found on the site after commencement of construction for which a permit has not been granted then the owner/applicant shall cease construction until the appropriate permits are obtained. The applicant shall also coordinate with the U.S. Fish and Wildlife Service concerning the preservation or permitting needed to take scrub habitat. An exemption letter will be required if a permit is not necessary.

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- d. At the time of construction plan review, evaluate design options that would provide for a pedestrian walkway connection from the north and east sides of the site to the adjacent school property.
- e. Provide traffic improvements to Eau Gallie Boulevard as required by FDOT. Such improvements may require the installation of eastbound and westbound dedicated turn lanes and the relocation of the public sidewalk.
- f. Provide a 25-foot wide public access easement along the eastern shore of the Eau Gallie River to provide a continuous public access from Eau Gallie Boulevard to the River Road right-of-way.
- g. Move the southwesterly most building so that the structure does not encroach into the Code required 35-foot building setback from the water's edge and to preserve the 20" diameter oak indicated within the building footprint.

Vaheed Teimouri, applicant's representative, agreed with the stipulations.

There was a brief discussion regarding the use of the name "Riverwalk", the fact that the Olde Eau Gallie Riverfront area has plans to develop a "Riverwalk", the close proximity of the two, and whether the applicant would consider using a different name. Mr. Teimouri commented that he would discuss this with the owner.

Mrs. Poole discussed the removal of trees and the difficulty in saving trees with 22 units proposed. Mr. Teimouri commented that the entire site is beautiful and stated that a number of trees would be preserved along Eau Gallie Boulevard, through the wetlands and along the western boundary. The property slopes nicely and there are a lot of trees in that area.

Mrs. Poole asked for assurance that contractors will not park on the roots of the trees. She also requested that barriers be placed around the trees at a distance that would protect them. Mr. Teimouri commented that the ground is not level and it would be difficult to park construction equipment on the property. This fact should help protect the trees.

Mrs. Poole asked if the wetlands will be preserved. Mr. Teimouri responded yes and commented that the property does not require much fill; unfortunately, a lot of clearing is needed. They will attempt to save as many trees as possible. The applicant is spending a lot of money on landscaping – and it will create a successful project.

Responding to Mr. Palmer, Mrs. Braz stated that the density for this property is 15 units per acre; however, this development is 11.58 units per acre.

Moved by C. Palmer/E. Palmer for approval of SP-2002-23 subject to the stipulations proposed by the Planning and Zoning Board. Motion carried unanimously.

- 17. SITE PLAN APPROVAL (SP-2002-26/NORTHSIDE PRESBYTERIAN CHURCH): (Public Hearing) A request for site plan approval on a 6.708-acre parcel zoned C-R-2 (Cap 13) (One-, Two-, and Multiple-Family Residential with a cap of 13 units per acre and a conditional use for a church), located on the north side of Lake Washington Road, east of

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Stewart Road and west of U.S. 1. (Owner/Applicant – Northside Presbyterian Church of Melbourne, Inc.) (Representative – Herb Sands) (Planning and Zoning Board – December 19, 2002)

Mrs. Braz briefed Council.

The Planning and Zoning Board recommended approval of SP-2002-26, Site Plan for Northside Presbyterian Church, consisting of a two-page plan prepared by Herbert J. Sands, of Melbourne, Florida, with Project No. 0123 with the findings in the Planning and Zoning Board Memorandum and the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the Engineering Department and the Planning and Economic Development Department.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to, future development impacting the area of the plan located west of the scrub jay boundary line and the area east of the line designated as an oak envelope.

- b. All trees, including those within the area described in Condition a., shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces, and retention areas shall be shifted whenever possible to preserve trees.

Initially, trees shall only be removed for driveways, drainage facilities, and parking spaces. Trees in the footprint of the structure shall be removed only in conjunction with a building permit. All trees to be removed shall be identified by Code Enforcement personnel and an evaluation shall be made to determine the possibility of saving the trees by shifting the building pad or drives. All trees to be preserved must be protected by barricades during construction.

- c. Prior to development of the property, the owner/applicant shall obtain and provide to the City an approved mitigation plan and permits from the Florida Fish and Wildlife Conservation Commission to relocate any gopher tortoises found on the property and a revised/updated permit from the U.S. Fish and Wildlife Service to take scrub jay habitat.

Should the developer discover that other endangered or threatened species for which a permit has not been granted are found on site after plan approval and prior to completion of construction, construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.

Mrs. Walker questioned why the applicant is only required to pave 33% of the parking area. Mrs. Braz responded that City Code requires 50% be paved; however, the applicant received a variance from the Board of Adjustment. They do have the total number of parking spaces required, they merely have a variance to provide less paved parking spaces.

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Mrs. Poole commented this variance was given in 1995. Mrs. Braz stated that Ordinance No. 95-60 granted a conditional use for a church on the property. Following that approval a variance regarding the unpaved parking spaces was received from the Board of Adjustment. Mrs. Poole asked whether site plans expire within a year if there has been no development. Mrs. Braz replied yes; however, variances run with the land.

Mrs. Poole stated that the wetlands have been disturbed because of clearing and asked if the church did this clearing. Mrs. Braz commented that she does not think the church has done anything on the property.

Mrs. Poole asked about the location and type of mitigation. Mrs. Braz responded that the St. Johns River Water Management District would determine mitigation for wetlands and the wildlife agencies would determine mitigation for gopher tortoises/scrub jays.

Mrs. Poole referenced paragraph two of stipulation (c) and asked whether anyone had ever reported finding an endangered species. Mrs. Braz responded not until it was too late. Staff can make recommendations that are stronger than the other regulating agencies; however, we must then provide qualified staff (environmental biologist) to decide whether a wetlands is worth preserving and how to mitigate above and beyond St. Johns' regulations. Mrs. Poole commented that St. Johns has gotten very lax.

Herb Sands, applicant's representative, agreed with the stipulations. He stated that the site plan depicts the planned church. Coverage of the site is minimal. The only change from the original plan is a substantial reduction in the size of the project (about one-third the size of the original proposal). He stated that the site encompasses over six acres; however, the applicant only proposes a 9,000 s.f. facility.

Mrs. Poole commented that the church plans a school in the future. Mr. Sands advised that the church has intentions of growing; however, he cannot address that. Additional structures and development would return to Council. Regarding mitigation, Mr. Sands stated he has never had any discussion with the applicant about mitigating off-site. The applicant intends to take care of all the environmental issues on the property.

In response to Mr. Palmer, Mrs. Braz stated that staff will add more detailed concurrency information to the agenda report.

Mrs. Poole asked whether Mr. Sands could assure her that the applicant will mitigate on site. Mr. Sands stated he can't make that statement; however, he again stated that he has never had any discussion with the applicant except that they will take care of the issues on site. The applicant does not plan to disturb the areas. Mr. Sands advised that the project would have a low impact on this site.

Moved by E. Palmer/Walker for approval of SP-2002-26 subject to the stipulations proposed by the Planning and Zoning Board. Motion carried unanimously.

18. PRELIMINARY PLAT APPROVAL (SD-2002-06/PALMWOOD SUBDIVISION): (Public Hearing) A request for preliminary plat approval for Palmwood Subdivision on a 12.23-acre

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parcel zoned R-1B (Single-Family Residential), located on the west side of John Rodes Boulevard, north of Eau Gallie Boulevard) (Owner/Applicant/Representative – Beville Outlaw) (Planning and Zoning Board – December 19, 2002)

Mrs. Braz briefed Council.

The Planning and Zoning Board recommended approval of SD-2002-06, Preliminary Plat for Palmwood Subdivision, consisting of a three-sheet plan coded 12\723-32\PLAT prepared by Outlaw & Jones Engineers, Inc. of Melbourne, Florida, dated December 2002, with the findings in the Planning and Zoning Board Memorandum and the following conditions:

- a. Any change to the preliminary plat will require its re-evaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the preliminary plat includes, but is not limited to: 1) an increase of more than 4 lots, or 2) any change in the street network or retention pond location.
- b. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.
- c. The applicant/developer shall take measures necessary to save as much natural native vegetation as possible. Such evaluation shall occur at construction plan review and at the time of individual lot (building permit) review and approval. When possible building, retention and parking spaces shall be placed in locations to permit for the maximum preservation of trees and other native vegetation.
- d. Prior to construction plan approval the applicant shall evaluate any wetlands and obtain the approval from the St. Johns River Water Management District to permit removal or modification to any wetlands on the property and provide an acceptable off-site drainage system including modification necessary to accommodate stormwater of the adjacent Eau Gallie Estates (Pine Grove) Mobile Home Park.
- e. The applicant shall be required to make improvements to John Rodes Boulevard including, if deemed necessary by Brevard County Traffic Engineering, northbound and southbound turn lanes and appropriate signing.

Mrs. Poole discussed the grade changes necessary to elevate the lots from the flood zone, the wetlands and Brevard County comments about the wetlands, area flooding experienced during Hurricane Erin, and the possibility of saving a maximum number of trees.

Beville Outlaw, applicant, agreed with the recommendation and the conditions of approval. He pointed out that Mrs. Poole raised some good questions.

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Mrs. Palmer stated that Tract C is being left as a possible connection to a future subdivision. She asked if there is a plan for a future subdivision and its location. Mr. Outlaw pointed out that the development stops at the south near the mobile home park because the wetlands are located farther south; the applicant does not want to get in the wetlands. He also pointed out that the northwest ½ acre corner is being retained as a wetland. He added that there are a few wetland areas that don't require mitigation because the areas are less than ½ acre.

Mr. Outlaw explained that fill is required for this project because of the flood plain. The elevation is between 20 and 21 feet. The property is a little less than that and slopes from John Rodes Boulevard to the west. The development also requires grading the lots from the rear to the street so as not to flood the trailer park to the south and any stormwater going into the ditch on the north side. This is required by the City's ordinance.

Mrs. Palmer expressed concern about the drainage and flooding. She asked about drainage during a storm. Mr. Outlaw explained that Tracts A and B are retention areas. The stormwater runoff will outfall to the north through the wetland area into an FDOT ditch. This is what St. Johns desires to keep that a wetland. He also talked with FDOT. Both agencies are in agreement with the proposed discharge of stormwater. The ditch is controlled by FDOT and they believe it will handle the stormwater.

Following a brief discussion, Mr. Outlaw commented that with past projects he designed in the City, there have been no areas that flooded. He said it is a question of gravity, which must be addressed first.

Mrs. Poole said that this is in a different area. She is concerned because there are two wetlands under ½ acre that Mr. Outlaw said he does not have to mitigate. She stated that a miracle would be needed not to have flooding in that area.

Mrs. Walker also has a problem with the drainage. She stated water does not flow uphill and asked if a pump would be used. Mr. Outlaw agreed that water does not flow uphill; however, it does drain to the north on this property.

Mrs. Walker commented that during the flooding, the residents had to use boats to get to their homes. Mr. Outlaw responded that the mobile home park floods because the project was improperly designed many years ago. The design was for the water to flow east into the John Rodes Boulevard ditch on the east side. The invert, or the flow line, from the mobile home park was such that when John Rodes Boulevard flowed with water, water backed up into the mobile home park. That flow line has been plugged to prevent that from happening. Canals were dug around the mobile home park to get the water to flow west. He agreed there is a problem and the mobile home park will continue to flood until all of the problems are corrected; however, his project will not contribute to these flooding problems.

Moved by Hand/Contreras for approval of SD-2002-06 subject to the conditions proposed by the Planning and Zoning Board. Approval by Council includes the granting of variances from City Code, Chapter 29, Section 29-6 (b)(1) b. to not have to provide a street stub extension to the property to the north across from the FDOT drainage right-of-way, from

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Section 29-6 (b)(4) k. to permit a cul de sac in excess of 1,000 feet, and a variance from Section 29-6 (b)(4) m. to permit a block length of greater than 1,500 feet.

Mrs. Palmer asked whether any Council Member could substantiate Mr. Outlaw's claim that his projects do not flood. Mrs. Hand responded yes. She discussed improvements Mr. Outlaw has made in his project areas.

The question was called. Motion carried. (Mrs. Poole voted nay, stating she could not support the project because of the wetlands.)

19. PRELIMINARY PLAT APPROVAL (SD-2002-07/BELLE TERRACE SUBDIVISION): (Public Hearing) A request for preliminary plat approval for Belle Terrace Subdivision located on a 15.11-acre parcel zoned R-1B (Single-Family Residential) located on the southwest corner of Eber Road and Stack Boulevard. (Owner/Applicant – Belle Terrace, LLC) (Representative – Joseph W. Mayer, Bussen-Mayer Engineering Group, Inc.) (Planning and Zoning Board – December 19, 2002)

Mrs. Braz reviewed the agenda package.

The Planning and Zoning Board recommended approval of SD-2002-07, Preliminary Plat for Belle Terrace Subdivision, consisting of a two-sheet plan, sheet numbers 3 and 4 of 14, prepared by Bussen-Mayer Engineering Group, Inc., of Merritt Island, Florida, with Project Number 325801, dated December 4, 2002, with the findings in the Planning and Zoning Board memorandum and the following conditions:

- a. Any change to the preliminary plat will require its re-evaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the preliminary plat includes, but is not limited to: 1) an increase of more than four lots, or 2) any change in the street network or retention pond location.
- b. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.
- c. The applicant/developer shall take measures necessary to save as much natural native vegetation as possible. Such evaluation shall occur at the time of individual lot (building permit) review and approval. When possible building, retention and parking spaces shall be placed in locations to permit for the maximum preservation of trees and other native vegetation.
- d. Prior to construction plan approval the applicant shall evaluate any wetlands and obtain the approval from the St. Johns River Water Management District to permit removal or modification to any wetlands on the property.

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- e. The applicant shall provide to the homeowners' association an easement along the west lot lines of Lots 36 and 47, a minimum of a five foot wide easement for a common opaque fence to be constructed in conjunction with a fence within Tract F.

Mrs. Poole referenced the oak tree clusters located on Lots 23 and 46. The agenda package says the grade change will be minimal and that these trees may be preserved. She asked whether Council could require that these trees be preserved.

Mrs. Braz pointed out this is only a layout and preliminary construction drawings. It is not clear where the trees are located on the lot. If the tree happens to be in the middle of the lot it may be impossible to save. If it's in the back of the lot it might be saved.

Mrs. Palmer stated that Tract E and F are for open space. One tract is .02 acres and the other .04 acres. There is no real open space except for the retention area. Mrs. Braz agreed there is no useable open space.

Continuing, Mrs. Braz stated that the ordinance regarding R-1B zoning and open space will come to Council soon. It has been bogged down at the Planning and Zoning Board stage, members asked for additional research. Mr. Palmer asked that an ordinance be returned to Council within the next 30 days. Mrs. Braz commented that it will return to the Planning and Zoning Board the first meeting in February and will come to Council the second meeting in February. By consensus Council agreed with this timeframe.

There was a brief discussion regarding the amount of frontage of the lots in the development. Mrs. Braz confirmed that each lot has at least 50 feet of frontage.

Barry Cabaniss, Bussen Engineering, agreed with the stipulations. Mr. Cabaniss confirmed for Mrs. Poole that the applicant lives in the North Melbourne area.

Mrs. Palmer asked why no open area was left. She believes this would make the area more attractive to potential buyers. Mr. Cabaniss agreed that it probably would. However, he was not involved with the layout design, does not know what transpired with the applicant and why they came up with this. Mr. Cabaniss confirmed for Mrs. Palmer that this development is single-family homes with more than one bedroom.

Mrs. Poole asked if the lack of green area is to construct more homes. Mr. Cabaniss replied that money drives everything, so yes.

Moved by E. Palmer/Hand for approval of SD-2002-07 subject to the conditions proposed by the Planning and Zoning Board. Motion carried. (Poole and C. Palmer voted nay)

20. COUNCIL ACTION RE: Board Appointments

- a. Planning and Zoning Board – two alternate members

Moved by C. Palmer/Contreras to reappoint Mr. Lauritsen and Mr. Droor. Motion carried unanimously. (Term: 1/25/2003 – 1/24/2006, 3-year terms)

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b. Melbourne Housing Authority – one member

Moved by E. Palmer/Walker to confirm the appointment of Joan Madden. Motion carried unanimously. (Term: 1/14/2003 – 12/8/2004, unexpired 4-year term)

21. COUNCIL ACTION RE: Employee health and other insurance benefits.

Mrs. Elliott reviewed the agenda report.

The recommendation is for approval of the employee insurance benefits package effective April 1, 2003 and for a five-year period subject to acceptable renewal terms as follows:

	<u>City Cost</u>	<u>Employee Cost</u>	<u>Total Cost</u>
Flex Plan Admin	\$3,900		\$3,900
Basic Life	82,819	\$9,534	92,353
Supplemental Life		87,044	87,044
Dependent Life		17,279	17,279
Short Term Disability		84,059	84,059
Dental	1,000	110,679	111,679
Long Term Disability		78,937	78,937
Medical Insurance	\$3,462,822	937,339	4,400,161
<b>TOTAL COST</b>	<b><u>\$3,550,541</u></b>	<b><u>\$1,324,871</u></b>	<b><u>\$4,875,412</u></b>

Mayor Buckley commented that he has never seen City employees involved in any program as much as this. The employees increased their own co-pay because they felt this was the best program.

Moved by Poole/E. Palmer for approval as recommended. Motion carried unanimously.

Council took action on items 22.1 and 22.2 at this time.

22. COUNCIL ACTION RE: City Attorney performance evaluation and pay adjustment.

Council Member Contreras recommended that evaluations be submitted to the City Clerk and copied and distributed to each Council Member. He also suggested that Council review the performance evaluations and discuss the pay adjustment at the next meeting.

Mrs. Palmer agreed. She does not like reading the scores and discussing at a public meeting.

Mrs. Poole would like information regarding what the Airport Attorney is paid. Mrs. Palmer questioned whether this is germane because it comes from a different budget. Mayor Buckley commented it is not comparable. The Airport Attorney works certain hours and bills only those hours worked. Mrs. Poole stated she would like the information.

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Moved by Hand/C. Palmer to submit evaluations and discuss the salary issue at the next meeting. Motion carried unanimously.

Mrs. Palmer asked about the number of hours per week the City Attorney works for the City of Melbourne. Mr. Gougelman responded whatever it takes. He is a management level employee and does not receive a salary on an hourly basis. His salary is computed annually.

Mrs. Walker asked whether Mr. Gougelman is paid by the City when he attends a Metropolitan Planning Organization (MPO) meeting. Mr. Gougelman responded that if he attends an MPO meeting during the day he is not compensated by the City for that work time. It is recorded as two hours off without compensation. He then bills the MPO independently. He pointed out that when Council hired him he was allowed to keep five clients, the MPO, the State MPO, Indialantic, Melbourne Beach, and the Space Coast League of Cities. When he does something for another client during the day, which is infrequent, it is taken as no compensation time as far as the City is concerned. He added that the Space Coast League of Cities is a pro-bono arrangement. However, if he were to do a major project for them, some type of a brief for a lawsuit filed, he would bill them as an independent.

Mrs. Palmer commented that if there is a time sheet, the time can be accounted. Mr. Gougelman stated not exactly. He explained that if he is at work for 10 hours, he is paid for eight hours. And by the same token, if he is here for six hours, he is still paid for eight hours. Looking at the time sheets won't show anything – simply eight hours. He commented he completes a time sheet as required by the Finance Department.

Mrs. Elliott explained that the time sheets are required for accounting purposes, mostly for workers' compensation.

Added to the agenda:

22.1 COUNCIL ACTION RE: Revised Professional Services Agreement Contract for EDAW, Miami, FL.

At the November 26 meeting, Council approved the EDAW contract for \$50,000 for the conceptual development plan for the Olde Eau Gallie Riverfront Redevelopment Area and a schematic design of the Riverwalk. When the contract was developed it was contemplated that the consultant would be reimbursed for expenses, but this was not identified at the November 26 meeting. A copy of the proposed contract was provided to Council.

Moved by E. Palmer/C. Palmer for approval of the revised contract.

Mrs. Poole stated she has a problem with this. She discussed the process followed by the Downtown Redevelopment District. She believes this project has been sped up and commented that you can't do in two to three years what took the Downtown Melbourne area 20 years to do. The Olde Eau Gallie Riverfront Redevelopment Area is obligated for 17 years to repay the funding for the recently purchased parking lot.

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Mrs. Braz reported that the negotiations started out with a different agency and when a contract figure was agreed upon she did not realize that the reimbursable expenses were not included. On November 26 Council approved \$50,000 when the amount should have been \$60,000. Rather than taking \$10,000 from General Fund this proposal is to take the money (up to \$60,000) from the Olde Eau Gallie Riverfront Area. This does not mean that all the money will be used; but if needed the money is there. Any unused money will go back to the District's budget.

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

- 22.2 COUNCIL ACTION RE: Transfer of \$10,000 from the Eau Gallie Riverfront Streetscaping project to the Master Plan – Eau Gallie Riverfront project.

Moved by Hand/Contreras for approval. Motion carried. (Mrs. Poole voted nay)

Mr. Gougelman commented that one reason this contract is before Council is because it is a lengthy contract that Council has not seen previously. A brief discussion followed regarding which contracts should be returned to Council for additional approval.

Council took action on item 22 at this time.

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Poole requested that the County's comments regarding development projects be included in the Council package with the Council Agenda item.

Mrs. Palmer referenced the recent bomb scare false alarm near Bowe Gardens Church. The incident turned out to be fireworks at a residence. She expressed concern about the cost of the operation and asked whether the person that made the 9-1-1 call to the Police Department could be held responsible for the costs incurred. Mrs. Elliott stated she will have the Police Department investigate the costs involved and whether any charges were filed. She stated the incident was a misunderstanding in a landlord/tenant situation.

Mrs. Palmer asked that the public be made aware of the time lost and the cost involved for something this insignificant.

24. ADJOURNMENT

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

The meeting adjourned at 10:48 p.m.

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Assistant City Clerk – 1/24/2003

Approved by Council: 1/28/2003