

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 28, 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. Pastor Dick Phelps, Hope Ministries, 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
	Amy W. Elliott	Acting City Manager
	Paul R. Gougelman, III	City Attorney
	Cathleen A. Wysor	City Clerk
	Bill McCord	Planning & Zoning Administrator

Absent:	Cheryl Palmer	Council Member, District 5 (Ill)
	Loretta Isenberg-Hand	Council Member, District 6 (Illness in family)

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented a proclamation to Coach Dan Burke and members of the Palm Bay Pirate Football Team in recognition of their 2002-2003 FHSAA Class 4A State Championship.

Mayor Buckley presented the following awards from the Florida Safety Council to Risk Manager Ken Gray and Safety/Training Coordinator Roosevelt Solomon: 2002 Corporate Safety Award for outstanding safety performance in the public sector and the 2002 Fleet Safety Award at the gold level, which is the highest award for outstanding driver safety performance.

Later in the meeting, Mayor Buckley recognized Boy Scout Troop 309 in the audience.

5. APPROVAL OF MINUTES – January 14, 2003 Regular Meeting

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

6. CITY MANAGER'S REPORT

Acting City Manager Amy W. Elliott reported on the following:

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- Peggy Braz represented the City of Melbourne today at the Florida Cabinet meeting. Governor Bush highlighted the municipal mentoring program and the cities that have contributed to its success.
- City crews worked Saturday and Sunday evening on the Wickham Road water main leak. Another leak was found; exploratory work will be done Wednesday and repairs will possibly be made Wednesday evening.
- City staff attended the County Water Supply Board meeting on Tuesday. The city's concern relates to the resurrection of an initiative to create a water and sewer special district and the impact that would have on the city's utility. City staff will continue to monitor the discussions.
- The first quarter budget review was distributed to Council and will appear on the next agenda for action.

Ms. Elliott referenced the memoranda requesting that Items 19.1 and 19.2 be added to the agenda.

Moved by E. Palmer/Contreras to add Items 19.1 and 19.2 to the agenda. Motion carried unanimously.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. COUNCIL ACTION RE: Preserve at Longleaf Apartments.

- a. Request of Richard G. Mebus asking Council to remove the stipulation requiring construction of a pedway from Post Road Cascades Development to Longleaf Elementary School. (Postponed by Council December 17, 2002)
- b. Site Plan Approval (SP-2002-22): (Public Hearing) A request for site plan approval for 298 units on an 88.63±-acre parcel zoned R-2 (Cap 6) (One-, Two- and Multiple-Family Residential with a cap of six units per acre) located west of Wickham Road and north of Post Road. (Owner – The Preserve at Melbourne, LLC) (Applicant – Altman Development Corporation) (Representative - Philip Nohrr) (Planning and Zoning Board – November 21, 2002) (Postponed by Council December 17, 2002)

Mr. McCord reviewed the agenda report for items "a" and "b."

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The recommendation on item “a” is for no change to the stipulation. This will require that the applicant for Longleaf Preserve actively seek a solution that will be mutually agreeable to all the affected parties.

Regarding item “b”, the Planning and Zoning Board recommended approval of the site plan, consisting of eight pages prepared by Miller, Einhouse, Rymer and Associates, Inc., of Kissimmee, Florida, with Project No. 58.41, dated October 17, 2002, with final revision date of November 14, 2002 (sheets S-2, S-3, and S-4) and by B. S. E. Consultants of Melbourne, Florida, with Project No. 10303.05, with final revision date of 10/29/02 (sheets S-1, S-5, S-6, S-7, and S-8). The recommendation is based on the findings listed in the agenda package, subject to the conditions listed below (as modified by the developer and the School Board after the Planning and Zoning Board meeting):

- a. Any change to the site plan will require reevaluation by the Planning and Economic Development Department. Any substantial change to the site plan will require review and approval by the Planning and Zoning Board and City Council.

A substantial change in the Site Plan includes, but is not limited to: 1) a decrease of 5% or more of the open space or vegetative areas (which are not part of a stormwater retention area) on the property, including landscaped islands in the parking lots; 2) a 10% or more increase in the gross square footage in the floor area of structures; 3) a decrease in the number of parking spaces provided below the Code required parking spaces; 4) any additional impacts to wetlands not shown on the site plan; or 5) an increase in the number of units.

- b. Prior to development of the property, the owner and/or applicant shall obtain a clearance letter or approval of a mitigation plan from the U. S. Fish and Wildlife Agency to develop any portion of the property identified on the official scrub jay habitat maps, or for any other endangered or protected species or species of special concern. Should the developer discover that endangered or threatened species for which a permit has not been granted are found on site after plan approval and prior to the completion of construction, construction shall be suspended until adequate permits are acquired or the appropriate jurisdictional agency provides approval to proceed with development. “Development” shall be defined as set forth in Section 380.04, of the Florida Statutes.
- c. Provide a substantial vegetative buffer with fast growing trees and other vegetation within the 25-foot wide buffer in the southwest area of the plan adjacent to single-family lots.
- d. The applicant shall participate in creating a public access easement for bicycle and pedestrian use, extending from the east right-of-way line of Huntleigh Way, thence extending along the east side of the site adjacent to the east shore of the existing lake and mitigation area, where permitted, to the south line of the four lane access road. Said easement shall be no less than 12 feet in width and shall be in a form acceptable to the City Manager and City Attorney. This shall require the

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owner/developer to participate in negotiations with affected parties including Lennar Homes, the Post Road-Cascades Homeowners' Association, the St. Johns River Water Management District and other parties or successors with ownership interest in the proposed easement property.

- e. The applicant shall provide a minimum of a 12-foot wide public pedestrian and bicycle access easement from the north boundary of the Longleaf Elementary school site north of the school retention site or other area approved by the city to the easterly line of Windover Farms Subdivision and to the Heartwood Drive/Canard Drive intersection, per the Development Agreement as recorded in ORB 3673, Page 2960, Public Records of Brevard County, Florida. Said pedway shall be constructed by the applicant as described in the said development agreement prior to the final Certificate of Occupancy being issued by the city on the subject (site plan) property or March 2004, whichever shall occur first. Should a situation arise where the School Board no longer is able to provide access to the Windover Farms development for pedestrian use, the applicants shall not be required to construct said pedway, but shall retain the 12-foot wide easement for such use in the event that this pedway, or a similar pedway, is constructed at a future date serving Windover Farms and other residential areas north and west of the apartment complex site. If necessary, a bond equal to 110 percent of pedway construction costs shall be provided if the pedway construction cannot be constructed after completion of the project. (This condition shall have no affect on any private agreements between the applicant and the School Board.)
- f. The applicant shall provide to the city an acceptable cross drainage easement or recorded agreement with the School Board providing for storage and conveyance of stormwater for the school site development and the apartment complex site development.
- g. The applicant and/or applicant's agent, including Lennar Homes or successors, shall modify the temporary drainage access easement (ORB 3615, Page 2543-2566), which provides stormwater conveyance for the retention pond easement for Post Road-Cascades Subdivision.
- h. All construction access shall be provided from the north access driveway or from other than the roadway that provides primary access to/from the school to Wickham Road.

This will require the applicant to construct a construction site access road to/from Wickham Road through the property located north of the adjacent South Brevard Baptist Church as shown on the site plan. A construction access from the owner of the property north of the church will be required for construction vehicles. The owner/applicant shall be solely responsible for negotiating and acquiring said access roadway as well as the site plan access driveway. Further, since the north access drive is located partially outside of the Melbourne city limits, Brevard County plan approval of the driveway shall be required. Should the School Board and the

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developer work out an agreement to use the south access road with a separation between the construction access and the school access, this stipulation shall be satisfied. Under such agreement, the proposed development will utilize the north driveway as their main access.

- i. The required transportation impact fees may be used to satisfy or partially satisfy the cost to the county and other parties of financing the improvements made to the joint/school apartment complex driveway (Wickham Road and Kensington Drive). This shall be based on a pro-rata share of total traffic accessing the signalized intersection. However, if the developer chooses to provide his main access to the property from the north, he will, at his own expense and without impact fee credits, provide a signalized intersection at Pebble Creek Drive, if warranted, based on build-out and approval by Brevard County. If warranted, the signal shall be installed or funding for the signal shall be deposited with the City Engineer before the Certificate of Occupancy is issued on the 15th *building.

*Mr. McCord revised wording at the meeting to change “unit” to “building” to reflect the intent.

- j. The required transportation impact fees and eligible impact fee credits may be used to satisfy or partially satisfy the cost of intersection improvements (other than the signal) which are necessary at the Pebble Creek Street/Wickham Road intersection or at other locations, as determined by the city and the Brevard County Traffic Engineering Department.
- k. The applicant shall provide Code required dumpster placement unless a variance is granted as provided by Code.

Mr. McCord referenced the memorandum distributed regarding approval by the School Board to allow construction equipment on a split road at the entrance to the school for one year. In return the developer will deed the road to the school. Mr. McCord added that if this is successful, the developer would use the north entrance as the primary entrance; this is different than what the Planning & Zoning Board considered. The south entrance (Longleaf driveway) would only be used for emergency access.

At the split entrance, the eastbound lane would be for construction and the westbound lane would be a two-way street/drive. A police officer would be provided, at the developer’s expense, to ensure that construction vehicles remain separate from regular school traffic.

Mr. McCord referenced the letter from David Shields, attorney representing the Post Road Cascades Homeowners’ Association. The letter outlines the concerns the association has with the proposed pedway to connect Post Road Cascades Subdivision to Longleaf Elementary School. The following are excerpts from Mr. Shields’ letter:

Post Road Cascades is a private subdivision; it should not be turned into an alternative entranceway for the school; there will be a significant number of children walking through

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the subdivision or there will be a significant increase in vehicular traffic bringing children to the cul-de-sac where the pedway terminates; it is already difficult for residents exiting the subdivision to make a left turn onto Post Road; the pedway has been proposed without proper regard for safety of the children; the pedway will traverse a marshy wetland area which is home to several large alligators; there are other dangerous animals in the area; the wetland area will potentially provide considerable cover for sexual predators that may want to harm young children; and there is a question about whether the pedway will meet the Americans with Disabilities Act requirements.

Mr. McCord stated that some of the language in the letter is “quite a stretch” and staff totally disagrees with the concerns referenced. Throughout his presentation, Mr. McCord discussed the poor planning on the part of the School Board with the placement of the school.

Mr. McCord confirmed for Mr. Palmer that this site plan provides for 298 units.

Mrs. Poole expressed concern with stipulations being added and/or modified following the Planning & Zoning Board meeting. Mr. McCord said the changes have been identified in the Council package. Mrs. Poole stated that because of the changes, she believes the item should return to the Planning & Zoning Board.

Mayor Buckley announced that this is a disclosure item. It was noted that each Council Member received a copy of Attorney Shields’ letter. Mayor Buckley added that about six months ago he talked to Phil Nohrr in general about this site plan.

Phil Nohrr, attorney representing the applicant, reported that currently there is an approved site plan for a multi-family development for 280 units by the prior owner. The last plan contained a requirement for wetland mitigation – about an acre. The plan on this agenda is different; it meets all of the Code requirements for site plan approval and is substantially superior in density, more environmentally friendly and more compatible with the School Board property.

This plan provides for 298 units; however, it is significantly less in density that what was approved by virtue of the development agreement in affect since 1990 or 1991. There is no second phase as it relates to future multi-family units; a single-family development is projected. One-third of the number of units previously approved is projected resulting in a significant reduction in density. The proposed plan provides for a .12-acre wetland mitigation; however, if the School Board provides the easement to run a line across the property, there will be no wetland mitigation.

Mr. Nohrr elaborated on the units, design, financing, clubhouse and amenities. He reported that the item came to Council with a recommendation that the southern entrance not be used for construction. The concern related to the impact on the school. Since that time, they have had detailed negotiations with the School Board and the School Board took the position that it would be okay under certain circumstances to use the southern road. Over the long term, they do not want the developer to use that road when the

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apartments are built. Mr. Nohrr clarified that the discussions with the School Board have not been finalized; however, he has every indication that the details will be reduced to writing.

He pointed out that all the parties and interests dealing with this issue who are charged with the safety and welfare of the school and students have concluded that it makes sense to work out an arrangement during construction. That entrance would be used for workers and light deliveries – not heavy construction equipment.

Mr. Nohrr said that Council has the decision of the Planning and Zoning Board but, more important, the benefit of the school's input. He recommended that the issue proceed and said that if Council does not proceed, his clients would be significantly impacted because of financing issues.

Regarding the concerns by Post Road Cascades Development, Mr. Nohrr said they would be happy to provide any/all easements. The pedway is not an issue with the developer and he will abide by Council's decision.

Mr. Nohrr explained that they intend to apply for a variance on the placement of the dumpster. If that is denied, they will meet condition "k."

Mr. Nohrr reported that when the School Board built the south entrance, it was not built to city standards. Additionally, the school constructed the cul-de-sac on the developer's property. They would like to develop an orderly construction plan, which allows limited use of the School Board road and ultimately clears up all the issues.

Bruce Francis, Vice President of Development, Altman Contractors, discussed the size of the units and encouraged Council to vote for the request.

Mr. Nohrr concluded by agreeing with the stipulations.

Mrs. Walker asked how long it would take to finish the first phase. Mr. Nohrr said they anticipate 17 months. He confirmed that it will be conventional financing; there will be no HUD financing.

In response to Mrs. Poole, Mr. Francis elaborated on the garage options. He noted that attached and detached would be available. Mrs. Poole said that only 90 out of the 597 parking spaces are for garages and Mr. Francis agreed.

Mrs. Poole questioned the arrangement with the School Board and asked how the agreement can be for a year when construction will take 17 months. Mr. Francis said the time difference relates to a school year versus a calendar year. Construction will span the summer months when school is not in session. He added that the current road is on his property. The School Board is about 40' outside of the easement. They are planning to deed the road to the School Board if they can come to terms on the agreement.

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Mrs. Poole said that she resents the applicant applying for a variance for the dumpster. Mr. Nohrr said he was simply being up front with their intention.

A brief discussion followed regarding the developer's need to proceed because of financing. Mr. Nohrr pointed out that they were previously scheduled before Council; however, at the request of the School Board, they asked that the item be delayed.

Mr. Francis confirmed for Mr. Palmer that the building height will be 27' and 30'; all heights will definitely be under 40'.

That concluded Council's questions on the site plan.

Mayor Buckley proceeded with Item "a."

David Shields, attorney representing the Post Road Cascades Homeowners' Association, clarified that Mr. Mebus is president of the association. Mr. Shields said that he (Mr. Shields) is acting with the homeowners' association authority and direction. Mr. Shields explained that 124 out of the 129 lots in the association are opposed to the pedway. The homeowners are not necessarily opposed to the apartment complex – just the pedway.

Mr. Shields referenced the letter he sent to Mayor & Council outlining the Cascades homeowners' concerns. Mr. Shields said that the stipulation for the pedway calls for a 12' easement; however, when he spoke to the developer and the developer's attorney, they indicated that St. Johns is only willing to allow 7' because of the wetland mitigation area.

Mr. Shields outlined what the homeowners believe will happen – parents will park along Huntleigh Way, walk to school with their child and then return. He noted that when the residents bought homes in this subdivision, they expected that it would be private, not a thoroughfare for the school.

Attorney Shields outlined several other scenarios and said that the first priority should be to ensure the safety of the children using the pedway. He reported that this is a swampland with 9' and 10' alligators, rattlesnakes and water moccasins. Additionally, he asked how the pedway will meet the requirements for children with disabilities.

Mr. Shields concluded by asking Council not to make the Cascades residents pay for poor planning by the School Board.

Mayor Buckley noted that the pedway stipulation has been on the property since the Cascades homes were constructed. Mr. Shields replied that they would like to be presented with a detailed and substantive response to their concerns – not for staff to simply say that the residents are crazy and don't know what they are talking about. The residents are here to persuade Council that, as a matter of policy, this is a bad idea. The pedway does not accomplish safe access to the school

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Richard Mebus, 3109 Huntleigh Way, informed Council that there are people in the Cascades Subdivision that won't allow their children to use the pedway. Mr. Mebus stressed that the community is opposed to the pedway. He referenced Mr. McCord's brief and questioned whether the 1998 traffic report referenced would still be applicable today.

M. Buczek, 4217 Montreaux Avenue (Cascades Subdivision), stated that the residents are opposed because of the traffic. He noted that a property owner would ultimately be responsible if a child were injured in the mitigation area; that places an additional burden on the residents. Mr. Buczek asked if the pedway will be lit and described the current problems associated with traffic. He asked that the stipulation requiring the pedway be removed.

J. Salas, 3100 Huntleigh Way, said that he is concerned about the number of children that will come across his property. He asked if he would be liable if a child fell off the pedway and was injured and if the pedway will be lit for children walking to school in the dark. Mr. Salas stressed that the pedway will personally impact him. Also, he noted that he would prefer that children not be put in a position of being hurt.

Attorney Gougelman clarified that under state law the city cannot indemnify.

Attorney Nohrr repeated that whichever way Council decides to go on the pedway is fine with the developer. He added that SJRWMD has not made its decision yet on the pedway.

Mayor Buckley asked Council to consider Item "a" first.

Moved by Contreras/Walker to remove stipulation "d" from the request. The roll call vote was:

Aye: Poole and Contreras

Nay: E. Palmer, Walker and Buckley

Motion failed. (Motion failed because it did not receive four votes.)

Council proceeded with Item "b."

Mayor Buckley's motion for approval of the item subject to the stipulations proposed by the Planning and Zoning Board, as modified did not receive a second. Mrs. Poole's motion that the item return to the Planning and Zoning Board did not receive a second and her motion to deny the request did not receive a second.

Moved by Buckley/Walker to postpone this item until a full Council is present. Motion carried. Mrs. Poole voted nay.

Recessed: 9:24 p.m.
Reconvened: 9:36 p.m.

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9. ORDINANCE NO. 2003-01: (Public Hearing/Second Reading) An ordinance providing for the repeal of Sections 31-90 through 31-95 (Vehicle Impound Ordinance) of Chapter 31, Code of Ordinances. (First Reading – January 14, 2003)

Attorney Gougelman read Ordinance No. 2003-01 by title. There were no comments from the audience.

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

Mr. Palmer said he originally voted against this and his feelings have not changed; however, he said he would vote in favor of the item to show support for the Police Department. He added that he would like for the Police Department to know that it is eliminating a tool.

Mrs. Poole stated that the Police Department and City Clerk's Office spend hours keeping up with the vehicle impound ordinance. And, the ordinance is not as effective as staff thought it would be.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2003-02 (CU-2002-16/SP-2002-25/TOYOTA/LEXUS OF MELBOURNE): (Public Hearing/Second 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 – Buchannan Farms, Inc. and 198, Inc.) (Representative – Scott Glaubitz, B.S.E. Consultants, and Craig Suman, Holeman-Suman Architects) (First Reading – January 14, 2003)

Attorney Gougelman read the ordinance by title. Mr. Palmer disclosed that Harold Davis asked him to support this item.

Scott Glaubitz, BSE Consultants, asked for Council's approval.

Moved by E. Palmer/Buckley for approval of Ordinance No. 2003-02.

Mrs. Poole asked if the applicant addressed whether the employees would use a sticker to identify their vehicles. Mayor Buckley said a letter in the package asks Council not to

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impose this requirement; however, if approval hangs in the balance, the applicant would reluctantly agree to that condition.

Mr. Glaubitz stated that it would be easy to determine if new cars are parked on the lot because they would not have a license plate. He added that the employees of the dealership are not in favor of putting stickers on their vehicles. Also, staff has indicated that assigning Code Enforcement personnel to look for stickers is not a good use of time.

Mrs. Poole said that she hopes this is an issue that the dealership addresses and enforces.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. COUNCIL ACTION RE: Pay adjustment for City Attorney. (Postponed by Council January 14, 2003)

Attorney Gougelman thanked each member for the evaluations and comments (previously submitted).

Moved by Contreras/Poole to increase the City Attorney's salary by 5%, from \$102,000 to \$107,100, retroactive to October 1, 2002. Motion carried unanimously.

NEW BUSINESS

12. COUNCIL ACTION RE: Florida Department of Environmental Protection permit for reverse osmosis concentrate disposal.

Ms. Elliott reviewed the agenda report. The recommendation is for approval to proceed with continued discharge into the Eau Gallie River as the selected alternative for reverse osmosis concentrate disposal.

Mrs. Poole asked that the city continue investigating stopping discharge to the river if a new alternative develops that is not costly.

In response to Mr. Palmer, Mr. Ralls elaborated on the data collected from the D.B. Lee well, which led to rejection of its use for concentrate disposal. He confirmed that he believes the city will have to eventually seal the well.

A brief discussion followed on the ActiFlo process and whether the reverse osmosis plant should continue. Mr. Ralls said he believes that a blend is better. Also, it is a good idea to

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keep the RO plant online as a backup. It allows for maintenance of the surface plant.

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

13. CONSENT AGENDA:

Moved by E. Palmer/Contreras for approval of the consent agenda. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Purchase of gasoline and diesel fuel, Glover Oil, Melbourne, Florida (\$147,326) and Petroleum Traders Corporation, Fort Wayne, Indiana (\$456,374) - \$603,700.
- b. Purchase of two replacement vehicles for Streets and Stormwater Maintenance Division, Atlantic Truck Center, Ft. Lauderdale, FL and Duval Ford, Jacksonville, FL - \$105,296 (vendors and vehicles as listed in the agenda package).
- c. Approval of Sodium Hypochlorite Conversion at Grant Street Wastewater Treatment Plant; purchase of pump metering skid, Blue Planet Environmental Systems, Melbourne and two bulk storage tanks, Odyssey Manufacturing Company, Tampa, FL, \$19,169; and transfer of \$19,169 from the Water and Sewer Contingency Account to Wastewater Treatment Machinery and Equipment (Account No. 650010-64000).
- d. Change Order No. 2 to Certified General Contractors, Inc. for Lipscomb Park Restroom, Project No. 9803 - \$4,232.
- e. RESOLUTION NO. 1803: A resolution authorizing the issuance of Golf Course Revenue Bonds, Series 2003, in the maximum principal amount of \$385,000 to partially finance the greens renovations and irrigation improvements to the Harbor City Golf Course, Indian River National Bank.
- f. RESOLUTION NO. 1804: A resolution revising the FY 2001-2002 Fourth Quarter Budget Review.

14. COUNCIL ACTION RE: Presentation and request by Lynn Pickett, Brevard Zoo, for the City of Melbourne to participate in the Brevard Zoo "Expedition Africa Municipal Challenge."

Lynn Pickett, Brevard Zoo Development and Volunteer Manager, made a presentation regarding the zoo's plans to construct a 10-acre African habitat. The zoo is asking for volunteer support at the Zoo's Community Build to be held on February 22 (and a financial donation of \$1,000 from the city to assist with funding of the exhibit).

Although action was not taken on the funding request, Council indicated to Ms. Pickett that the community build information would be distributed to city employees.

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15. COUNCIL ACTION RE: Supplemental funding request from Junior League of South Brevard to offset cost of a required fire alarm system for Lipscomb Park Community Center.

Ms. Elliott briefed Council and reviewed the agenda report. The recommendation is:

- Council to award an additional \$5,132 to the Junior League of South Brevard to offset the cost of a new fire alarm system that will benefit the existing Lipscomb Park Community Center as well as the addition to be built by the Junior League, and authorization for the Acting City Manager to execute an amendment to the agreement with Junior League to increase funding for the addition to the Lipscomb Park Community Center from \$50,000 to \$55,132.
- Transfer \$2,672 from the Myles Drive/Franklin Street Paving Project (Index #700071) and \$2,460 from the Seagrape Drive/Dunham Street/Branch Street Project (Index #700171) to the Lipscomb Park Project (Index #700253).

Moved by E. Palmer/Buckley for approval of the recommendation. Motion carried unanimously.

16. SITE PLAN APPROVAL (SP-2002-27/CINNAMON COVE II APARTMENTS): A request for site plan approval for Cinnamon Cove II Apartments on a 20.3-acre parcel zoned R-2 (Cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) with a zoning density agreement, located west of Babcock Street, south of Eber Road, north of Lake-in-the-Woods Drive (Owner/Applicant/Representative – Michael Maiorani) (Planning and Zoning Board – January 9, 2003)

Mr. McCord reviewed the agenda report. The Planning and Zoning Board recommended approval of SP-2002-27, site plan for Cinnamon Cove II, consisting of a one-page plan prepared by Droor and Associates Inc., of Melbourne, Florida, with Project Number 2002-20, dated 12/5/02, with a final revision date of 12/26/02, with the findings in the Planning and Zoning 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) an increase by more than six units as shown on the site plan; or 3) an increase in building size, height, or setbacks, which is less than the minimum required by Code.

- b. All hardwood trees, including scrub oaks of less than four-inch caliber, shall be preserved unless located in a driveway, paved parking lot, building pad, or retention

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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. Barricades placed at the drip line during construction must protect trees and scrub oaks to be preserved. All invasive, non-native vegetation shall be removed from the site including along or within the wetland areas and the drainage easement.

- c. The applicant shall obtain appropriate environmental permits from the Florida Fish and Wildlife Conservation Commission to relocate or take any 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.
- d. The multi-family owner/management will be responsible for maintaining the existing stormwater pond serving the single-family development.

Note: See Council action for revision to stipulation “d.”

- e. Convey the south 20 feet of the property adjacent to Lake in the Woods Drive to the city for use as right-of-way prior to construction plan approval.
- f. The owner/developer, for itself and its successors, shall not seek (and has affirmatively waived any right to) an ad valorem tax exemption on the real property subject to this ordinance. Based on a condition of approval voluntarily offered by the owner/developer, any future application for tax exempt status shall be deemed to be null and void.

Mr. Palmer asked why the city can't compel the homeowners' association to clean up the pond. Mr. McCord explained that the association does not own it; the original developer who never created an association owns it.

Mr. McCord added that the city's records indicate that the developer of the multi-family tract would be responsible for maintaining the pond. He added that we could take the existing owner to the Code Board. Mr. Palmer said he supports that and asked staff to proceed.

Mrs. Poole said the pond needs to be cleaned out and maintained; although the multi-family portion is not built, it serves the homes.

Council concurred with Mr. Palmer's recommendation to change the word “will” to “shall” in stipulation “d.”

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Debra Fleming, 800 South Banana River Drive, Merritt Island, representing the applicant, agreed with the conditions, including the change to stipulation “d.” She added that she believes they meet the City Code and would like approval.

Moved by E. Palmer/Walker for approval, including the noted change to stipulation “d.”
Motion carried unanimously.

17. PRELIMINARY PLAT APPROVAL (SD-2002-08/REFLECTIONS AT THE FOUNTAINS SUBDIVISION): A request for preliminary plat approval on a 46.94+-acre parcel, zoned PUD (Planned Unit Development), located on the west side of Stack Boulevard, south of Eber Road, north of Palm Bay Road (Owner/Applicant – Kisco Retirement Communities of Melbourne, LP) (Representative – Joseph W. Mayer, Bussen-Mayer Engineering Group, Inc.) (Planning and Zoning Board – January 9, 2003)

Mr. McCord briefed Council and reviewed the agenda report. The Planning and Zoning Board recommended approval of SD-2002-08, preliminary plat for the Reflections at the Fountains Subdivision, consisting of a two-sheet plan, prepared by Bussen-Mayer Engineering Group, Inc., of Merritt Island, Florida, with Project Number 298401, dated December 19, 2002, with the findings in the Planning and Zoning 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 to 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 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. Eliminate the stipulated 20-foot wide tract along the north boundary but require a wooden fence, or block wall as an alternative.
- f. Prior to construction plan approval, the applicant shall deed the south 20 feet to the City to use as a right-of-way.
- g. Provide street names that have been approved by the Brevard County Emergency 9-1-1 office.
- h. All parking areas must be paved with asphalt, concrete or other surface approved by the City Engineer.
- i. Require a tract or a note restricting motor vehicular access to/from Stack Boulevard from Lots 26-31 Block B, and Lots 106 Block C.

The Planning and Zoning Board proposed a new stipulation “e” because there is no longer a road along the north side of the property. That stipulation is in the zoning ordinance and cannot be changed without a public hearing. Staff does not agree with the new stipulation “e.” Additionally, the neighbors relied on that condition. Staff recommended stipulation “e” read as follows:

- e. Provide a 20’ tract along the north property line as required by the zoning approval to buffer the adjacent residential development; the tract shall include a staggered block wall and shall be the responsibility of the Homeowners’ Association.

Note: See Council action for clarification of “e.”

Mr. McCord confirmed for Mr. Palmer that the open space requirements exceed the 15% required by Code.

Mrs. Poole stated that she supports leaving stipulation “e” as recommended. Attorney Gougelman clarified that the intent of “e” is “...provide a 20’ wide tract...and maintenance thereof shall be...” Council concurred with the clarification.

Mrs. Poole referenced stipulation “d” and asked if there are a lot of wetlands on the property. Mr. McCord replied that there are small patches. He added that there may be areas on the west side where fill dirt will not be required.

Scott Nickel, Bussen Mayer, representing the applicant, agreed with the conditions, including the clarification of stipulation “e.” He confirmed for Mrs. Poole that this will be a gated community.

Moved by Walker/Contreras for approval subject to the conditions, including the (City Attorney’s) clarification of (the original) stipulation “e.” Motion carried. Mrs. Poole voted nay.

18. ORDINANCE NO. 2003-03: (First Reading/Public Hearing) An ordinance amending Chapter

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34, Vehicles for Hire, in accordance with the City Code Review Committee, Section 4, recommendations.

Attorney Gougelman read the ordinance by title.

Erick Michael, 1810 Pine Street, Brevard Yellow Cab Trust, outlined his suggestions as follows:

Section 34-58 and Section 34-69(c)(1) requires a taxi to post the schedule of rates. Mr. Michael said he believes all vehicles for hire – taxis, limousines, shuttles, etc. – should have to display their rates so that customers are not discriminatorily charged.

Section 34-59 provides that it is unlawful for the operator of any taxicab to charge or demand from any customer rates in excess of the rates or charges posted in the vehicle. Mr. Michael said this provision should apply to all vehicles for hire, not just taxicabs.

Section 34-68 requires every taxicab to be a minimum seating capacity. He said that all vehicles for hire should have to adhere to the minimum size.

Section 34-71 requires the outside of taxicabs to be lettered with the name of the owner and telephone number. Mr. Michael said all vehicles for hire should have to mark the outside of their vehicles with this information.

Mr. Michael concluded by saying the Chapter needs to provide for penalties.

Curtis Johnson, Lime Limo, Inc., 2415 Country Club Road, disagreed that limousines and towncars should be marked via lettering on the outside. However, he said that at a minimum limousines and shuttles should have a front tag, which identifies the company name. He noted that there are operators with no markings and it is impossible to tell whether they are properly licensed.

Continuing, Mr. Johnson said that the ordinance has no teeth; there should be fees imposed for non-compliance with the Code. Also, he said that the Police Department should provide enforcement of the Code at certain events like proms. He explained that vehicles from Miami, Orlando, etc. operate in Melbourne during special events and they aren't properly licensed. Mr. Johnson added that the city should consider a one day event permit.

Regarding the display of rates within limousines, Mr. Johnson said he disagrees with this. Operators of limousines and towncars generally operate through a reservation type system. The customer is aware of the charges prior to getting into the vehicle.

Mrs. Walker said she supports company information being provided on the sides of all vehicles for hire. Mr. Johnson explained that limousines and towncars have an upscale customer base. Requiring the outside of these vehicles to be marked with minimum letter would lead to a customer using an unmarked limousine from outside the area.

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Attorney Gougelman reported that under Florida law, a violation of a municipal ordinance carries an automatic penalty, assessed by court, of up to \$500 and/or 60 days in jail.

Zella Finch Jones, representing George Jones Airport Shuttle, agreed that the company name and rates should not be posted on the outside of limousines. She added that any limousine operator with good sense isn't going to pick up a passenger on the street; operators want to know who their customers are. Additionally, she noted that having the rate sheet available in the vehicle should be sufficient.

Ms. Jones expressed her concern (Section 34-70) about having to provide annual proof of inspection at the time the updated Certificate of Insurance is required. She asked for flexibility because each jurisdiction has a different due date. Without flexibility, she will have to have the same vehicle certified by an ASE certified mechanic several times per year, which will be costly.

Attorney Gougelman recommended Council consider the ordinance on first reading and have staff return at second reading with a report on the suggestions that have been made.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2003-03, subject to staff review of the comments made during the public hearing.

Responding to Vice Mayor Contreras, Sgt. Marc Claycomb with the Melbourne Police Department explained that currently inspections are basic. Officers check for functioning equipment from the ground level. The new Code will require vehicles to be placed on a rack and thoroughly inspected by a certified mechanic.

The question was called. Motion carried unanimously.

19. RESOLUTION NO. 1805: (Public Hearing) A proposed resolution authorizing expansion of the Babcock Street Redevelopment District to include the area east of Babcock Street, west of Bryan Street, north of U. S. 192, and south of Fee Avenue.

Note: A memorandum was distributed to Council, which corrects the resolution number in the backup material and provides a more detailed legal description.

Attorney Gougelman read the revised resolution by title.

Moved by Contreras/E. Palmer for approval of Resolution No. 1805. Motion carried unanimously.

Added to the agenda:

- 19.1 RESOLUTION NO. 1806: A resolution urging the Florida Legislature and the United States Congress to pass legislation completely banning human cloning; and requesting the President of the United States to sign such legislation.

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The City Attorney read the resolution by title.

Mrs. Poole clarified that this is an issue that the Palm Bay Deputy Mayor Tres Holton is personally pursuing. She discussed separation of church and state and pointed out that this resolution is inappropriate; it is an issue that will never come before municipalities for a vote. She recommended that members write personal letters if they support this rather than Council adopting a resolution.

Mayor Buckley stated that he believes this issue is significant. People are trying to create humans by cloning and that is a mistake.

Moved by Buckley/Contreras for approval of Resolution No. 1806. The question was called. Motion carried. Mrs. Poole voted nay.

Added to the agenda:

- 19.2 COUNCIL ACTION RE: Authorization for the City Attorney to provide a letter to the Senate Committee, which is considering possibility of presenting major annexation initiative to the Florida Legislature

Attorney Gougelman referenced the draft letter, which is more of a report and outlines the city's experience with enclaves, problems encountered, critique of the current legislation and proposes recommendations. The due date for sending the letter is February 1 and he is seeking Council approval.

Moved by E. Palmer/Contreras to authorize Attorney Gougelman to send the letter.

Mr. Palmer commended the City Attorney for preparing an informative and concise report. Mayor Buckley agreed.

The question was called. Motion carried unanimously.

20. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mayor Buckley reminded Council that Brevard County has been discussing the one-cent local option sales tax. The item will appear on the February 4 County Commission agenda. The proposal is to share the revenues in thirds – Brevard County, School Board and the municipalities. This could generate millions for the City of Melbourne and allow us to address infrastructure needs.

The Mayor polled Council to determine if there was support. Council expressed support for the sales tax by 4-1. Mrs. Poole said she is opposed. Mrs. Elliott stated that she will express the city's support to County Manager Tom Jenkins.

Mrs. Poole discussed the loss of Miguel's, an historical building, to make room for a drugstore. She asked Council to consider allowing a Comprehensive Plan Amendment to

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provide for historic preservation. She noted that Brevard County and other cities have this element in their Comprehensive Plans and it allows for the preservation of historical sites.

Moved by Poole/E. Palmer to direct the City Attorney to prepare an historical preservation amendment to the Comprehensive Plan.

Attorney Gougelman said that this element would more properly be prepared by Planning & Economic Development. He noted that he would be happy to work with this department and suggested that staff begin by contacting the Department of Community Affairs.

The maker/seconded concurred with the City Attorney working with P&ED. The question was called. Motion carried unanimously.

Mrs. Poole reported that a constituent contacted her to report that there is illegal netting of Pompano in the Indian River. She said she spoke with Representative Mitch Needelman, who recommended that Council send a letter to the Fish and Wildlife Commission requesting patrols be increased.

By consensus, Council agreed with sending a letter to the Fish and Wildlife Commission asking for increased patrols in the Indian River.

21. ADJOURNMENT

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

The meeting adjourned at 11:39 p.m.

City Clerk – 2/6/2003

Approved by Council: 2/11/2003