

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
APRIL 22, 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. Council Member Loretta Hand gave the invocation.
2. Pledge of Allegiance.

A moment of silence was observed in honor of former Mayor Nate Friedland, who recently passed away.

3. Roll Call.

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| 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 |
| | Jack M. Schluckebier, Ph.D. | City Manager |
| | Paul R. Gougelman, III | City Attorney |
| | Cathleen A. Wysor | City Clerk |
| | Peggy Braz | Planning & Economic Development Director |

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley recognized Florida Air Academy students in the audience. Additionally, the Mayor presented the following proclamations:

Recognizing the “Melbourne Police Department Domestic Violence Unit” for receipt of the Governor’s Peace At Home Award; accepted by Detective Sandy Meyers, advocate Yolanda Ortiz, volunteers Celia Kettner, Carrie Rooney and Melvin Rabinowitz, and Acting Police Chief Jim Reynolds.

“National VNA Week,” May 6-12, 2003; accepted by Linda Shelby, Program Director, and Linda Grodin, Community Relations Specialist, Space Coast Visiting Nurse Association.

“Beta Sigma Phi Day,” April 30, 2003; accepted by Irene Jarvis, President, Beta Sigma Phi South Brevard City Council.

Mayor Buckley presented the March Beautification Award to Peter Woods, President, The Oaks, 1800 West Hibiscus Boulevard.

5. APPROVAL OF MINUTES - Regular Meeting April 8, 2003

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

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6. CITY MANAGER'S REPORT

Mr. Schluckebier reported that the list of applicants for the Planning and Economic Development Director position is not final. The position will be advertised through the end of April.

Additionally, the City Manager indicated that the five finalists for the position of Police Chief have been selected (George Brennan, Michael J. Clancey, Linda M. Loizzo, Peter A. Marcus and Jim Reynolds). The Assessment Center will be conducted May 2.

Mrs. Hand asked if the County Commission made a decision regarding the local option sales tax (meeting conducted April 22). Mr. Schluckebier reported that about 12 – 15 people spoke in support of placing the issue on a referendum. A decision was expected after 5:00 p.m. today.

At Mrs. Poole's request, Attorney Gougelman read a poem entitled "Tiny Leaf" in recognition of Earth Day.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2003-21 (CU-2003-01/SP-2003-01A): (Second Reading/Public Hearing)
An ordinance granting a conditional use to allow for a mini-storage building on a portion of a 6.05-acre parcel located east of Wickham Road and south of Mariah Drive. (Owner/Applicant – Boozer Properties) (Representative – Vaheed B. Teimouri) (First Reading - 4/08/2003)

Attorney Gougelman read Ordinance No. 2003-21 by title. Mr. Contreras said he spoke with Anita Shaw on April 10. She discussed the clearing of the subject property along with the scrub jay habitat issue on the School Board property located across the street. No conclusion was reached. Mrs. Hand said Ms. Shaw left a message on her answering machine regarding this same issue.

There were no comments from the public.

From the agenda report: At the last meeting the applicant verbally agreed to relocate the entrance drive on Mariah Drive approximately 100' to the west to minimize conflict with the neighborhood. That reference has been included in the ordinance.

Moved by E. Palmer/Buckley for approval of Ordinance No. 2003-21. The roll call vote was:

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

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Nay: Hand and Contreras.

Motion carried.

9. ORDINANCE NO. 2003-23 (LDR-2002-05/FOC-2002-05/VEGETATION CODE): (Second Reading/Public Hearing) An ordinance, which transfers the provisions of Chapter 33 of the Melbourne Code of Ordinances, entitled "Vegetation," to the Land Development Regulations, Appendix D, Chapter 9, and revises the Vegetation Code in accordance with changes recommended by the City Code Review Committee, Section 4, the Planning and Zoning Board, and the Beautification and Environmental Advisory Committee. (First Reading - 4/08/2003)

Mr. Gougelman read the ordinance by title. Mayor Buckley referenced the staff memorandum, which outlines three minor changes. The changes are required to ensure that all developments that currently conform with a 10-foot front landscape area are not made non-conforming by the ordinance.

There were no comments from the public.

Moved by Contreras/Hand for approval of Ordinance No. 2003-23 with the three revisions (outlined in the staff memorandum).

Mr. Palmer asked that the maximum penalty (\$1,000) for clear cutting property be reviewed in a year to ensure that it is adequate.

The question was called. The roll call vote was:

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

Nay: C. Palmer

Motion carried.

10. ORDINANCE NO. 2003-24 (Second Reading/Public Hearing) An ordinance implementing a Water Franchise Agreement for the City of Indian Harbour Beach. (First Reading 4/08/2003)

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

Moved by Poole/Walker for approval of Ordinance No. 2003-24. The roll call vote was:

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

Nay: None

Motion carried unanimously.

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11. ORDINANCE NO. 2003-26 (CPA-2003-01) AND ORDINANCE NO. 2003-27 (Z-2003-947) LAKE WASHINGTON ROAD/AVOCADO AVENUE: (Public Hearings/Second Readings) An ordinance amending the Future Land Use Map by changing the land use from mixed use Commercial/Industrial to Low Density Residential and an ordinance changing the zoning from M-1 (Light Industrial) to R-1B (Single-Family Residential) on a 9.92+-acre portion, and from R-1A (Single-Family Residential) to R-1B on 19.13-acre portion of a 36.52-acre parcel located on the south side of Lake Washington Road, west of Avocado Avenue. (Owner – Slater Land Development, Inc.) (Applicant – Dave McWilliams) (Representative – Jake Wise, Construction Engineering Group) (First Readings 4/08/2003)

Attorney Gougelman read both ordinances by title. Mrs. Poole disclosed that she spoke with the Game and Freshwater Fish Commission. She added that she would clarify the discussion later under this item.

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

Moved by Hand/C. Palmer for approval of Ordinance No. 2003-26.

Mrs. Poole explained why she contacted the Game and Freshwater Fish Commission. At the last meeting the applicant said he could not apply for USFWS permits until the City approved the project. She stated that during her call she learned this is not true. The applicant may submit plans at any time for review; approval by the City is not a requirement for submittal.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

Mrs. Poole voted nay because it is not known if a portion of the property will be retained as a conservation area.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2003-27.

Mayor Buckley said that this is a vast improvement over the plans that were previously submitted for this property. Mrs. Poole stated that she is opposed to the R-1B zoning with 50' lots. She added that the R-1B zoning would result in the overcrowding of schools and roadways. Mrs. Palmer pointed out that the residential use is much more compatible with the surrounding neighborhood than an industrial use.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

NEW BUSINESS

12. COUNCIL ACTION RE: Consultant Selection for Fee Avenue Park Pool Replacement.

Mr. Ralls reviewed the agenda report. The estimate to construct a new swimming pool is \$800,000 to \$1,000,000. Florida Statutes require that the hiring of a design consultant for any project having an estimated construction cost greater than \$500,000 be based on a competitive selection process.

Staff advertised for pool design services and received two responses. Herb Sands AIA Architect, Melbourne, Florida and Corzo Castella Carballo Thompson Salman (C3TS), Ft. Lauderdale, Florida submitted qualification statements.

As required by State Statutes, a City staff committee interviewed the firms on April 7, 2003. The firms were provided a list of topics to discuss, addressing pool design experience, ability to provide the services, and approach to the project. The selection committee judged the consultants based on the firms' discussion of these topics. The selection committee unanimously voted Herb Sands AIA Architect the most qualified firm to provide design services for this project. Contract negotiations may not proceed until Council approves that firm.

Mrs. Palmer asked for specifics about why Herb Sands is more qualified, other than being local and available. Mr. Ralls said that Mr. Sands addressed the questions better than the other firm. He confirmed for Mrs. Palmer that both firms are qualified to do the job, both showed experience in pool design. One criterion in the Statutes relates to the ability to provide a service. The committee did not believe a consultant from Ft. Lauderdale could respond as quickly as a local consultant. Additionally, there would be cost involved with travel.

Responding to Mrs. Hand, Mr. Ralls said that a basic pool, similar to Lipscomb and Sherwood, would be a minimum of \$800,000. A brief discussion followed regarding the use of the pool by local swim teams and whether the new pool would include a dive well. Mr. Ralls said in addition to liability involved with a diving board, he estimates a dive well would add at least \$200,000 to the cost.

Mr. Palmer asked the advantages of having a "zero foot" section for children versus a separate kiddy pool. Mr. Ralls said a separate kiddy pool requires a separate treatment system; therefore, it increases the cost. An advantage to a separate pool would be the ability to fence it off entirely so that young children would not be near deep water. The zero foot section drops to 4'.

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A brief discussion followed regarding the design of the bathhouse, parking, costs involved, etc. Mr. Ralls stressed that this item relates solely to selection of the consultant.

Responding to Mrs. Palmer, Mr. Ralls reported that the firms were provided the list of discussion topics one week before the interview date. Mrs. Palmer said that Mr. Sands is qualified and does wonderful work. However, she is troubled by the fact that the City hires the same firms over and over, which smacks of favoritism. She questioned whether enough time was given to the firm that does not have knowledge of the City. Mr. Ralls said all but one question related to qualifications. The last question asked for ideas on how the pool might be integrated into the park. Mrs. Walker said that she shares Mrs. Palmer's concerns.

Discussion continued. Mr. Gougelman read an excerpt from the State Statutes on the competitive consultant negotiation act. Mrs. Palmer pointed out that one of the purposes relates to the equitable distribution of contracts; that is her point. If we continue selecting the same firm, we end up having an in-house consultant.

Mrs. Poole said that if the City wants to have the pool ready for the next swim season, it would be ridiculous to select a firm so far away. Additionally, it would cost more.

Mrs. Palmer said she will vote for Mr. Sands; however, she would like the City to be more careful in the future. Mr. Schluckebier added that staff would make the commitment to advertise widely and longer in order to encourage more competition.

Moved by Walker/E. Palmer for approval of the committee's choice and authorization for staff to negotiate a pool design contract with Herb Sands AIA Architect. Motion carried unanimously.

13. COUNCIL ACTION RE: Construction Contract for Parkway Drive Realignment, Stewart Road to FECR, Project No. 02608, Jobear/Warden Construction, Inc., \$159,645.75 and an appropriation of \$25,000 from Transportation Impact Fee revenues to this project budget.

Mr. Ralls reviewed the agenda report and, along with the City Manager, responded to general questions.

Moved by E. Palmer/C. Palmer for approval of the contract award to Jobear/Warden Construction, Inc. in the amount not to exceed \$159,645.75 and an appropriation of \$25,000 from Transportation Impact Fee revenues to this project budget. Motion carried unanimously.

14. COUNCIL ACTION RE: Change Order No. 5 to to Wharton-Smith for Contract D.B. Lee Wastewater Treatment Plant Improvements, Phase III, Project No. 96373, \$76,080.

Mr. Ralls briefed Council and responded to general questions.

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Moved by Hand/Walker for approval of Change Order No. 5 to the Wharton-Smith, Inc. contract in the amount of \$76,080. Motion carried unanimously.

15. CONSENT AGENDA:

Moved by E. Palmer/Contreras for approval of 15 'a' through 'g' as recommended.

Mrs. Poole discussed concerns with Item "f." Mrs. Braz elaborated on the application process and how the staff time would be spent. Mrs. Poole said she has a problem with the number of programs we are applying for and recommended that the City apply for and work one program at a time.

Mayor Buckley and Council Member Ed Palmer spoke in support of the City continuing to apply for grant funds.

Regarding Item "c", Mrs. Palmer asked for additional information on the cartridges. Chief Reynolds explained that the practice cartridges are budgeted into the cost of the initial acquisition. Beyond that, cartridges would be used in the course of normal duty. Commander Mark Laderwarg added that each time an officer uses the taser, it is reported and investigated.

The question was called. Motion carried. Mrs. Poole said she voted nay because she is not able to support Item "f."

The consent agenda was approved as follows:

- a. Supplement No. 139 to Continuing Consultant Contract for Jimmy Moore Tennis Parking Lot/Driveway Paving, Project No. 03700, Frazier Engineering - \$19,800.
- b. Annual contract for wastewater sludge transport and disposal, American Water Services, Inc., Fort Myers, Florida, at an estimated annual cost of \$127,560 (based on a price of \$10.63 per cubic yard).
- c. Appropriation of Federal Asset Sharing Funds to purchase advanced Taser defense weapons, DGG Taser, Jacksonville, Florida - \$113,444.63.
- d. Appropriation of \$8,500 Federal Asset Sharing Funds to purchase a trailer from the Melbourne Police Athletic League for use as a mobile command center.
- e. RESOLUTION NO. 1817: A resolution authorizing submittal of an application to the Florida Department of Education, Division of Public Schools Food and Nutrition Management Grants Program, in the amount of \$41,775 for a portion of the cost to operate and administer the 2003 Summer Food Service Program.
- f. RESOLUTION NO. 1818: A resolution authorizing submittal of an application to the Florida Department of Community Affairs and Environmental Protection for the Waterfronts Florida Partnership Program to receive the Waterfronts Florida

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community designation and approximately \$50,000 of grant funds over a two-year period.

- g. Appointment of City Manager to Technical Advisory Committee of the Brevard Metropolitan Planning Organization.

Recessed: 9:00 p.m.
Reconvened: 9:12 p.m.

- 16. COUNCIL ACTION RE: Request by Dr. William J. Broussard for Council discussion and review of special activity events in the Downtown area sponsored by Meg O'Malley's restaurant.

From the agenda report: Dr. William J. Broussard, President of Ambulatory Surgery Center of Brevard, Inc., submitted a request for Council review and discussion of special events in the Downtown Melbourne area sponsored by Meg O'Malley's restaurant. Dr. Broussard is asking Council to consider banning these events or provide for adequate facilities and police protection.

The recommendation is to encourage the Downtown Melbourne Association and Meg O'Malley's to work together to resolve merchants' complaints and to leave the City's current policies and procedures regarding special activity events unchanged.

William Broussard, Ambulatory Surgery Center of Brevard (ASC) and Florida Eye Associates, stated they have been having difficulty with these events for some time. He referenced the March Friday Fest, followed by the St. Patrick's Day event. He has a large parking area with easy access. Dr. Broussard elaborated on problems experienced with event participants who had too much to drink, including trash, urination, public sex, defecation, etc.

Dr. Broussard explained that he placed posts and chains around his parking lot to prevent further damage; however, event participants removed the posts. He discussed the covered, recessed exit where patients leave the surgery center. As a result of the events, he said the area smells of urine. This is inappropriate for his patients.

Continuing, Dr. Broussard said that the events result in underage drinking. He questioned how these types of events promote Downtown Melbourne as a quality location and stated that this does not enhance our reputation.

Dr. Broussard submitted a petition containing 20 signatures from people in the 800 - 900 block of New Haven Avenue requesting that the events sponsored by Meg O'Malley's be banned or that adequate facilities and police protection be furnished.

Dr. Broussard pointed out that the Melbourne Art Festival provides him with a Certificate of Insurance naming him as an additional insured. This would be a nice way for Meg O'Malley's to handle their events, offering protection for the businesses.

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Mrs. Palmer asked if Dr. Broussard's facilities experience problems with vagrants publicly urinating when there are no events. Dr. Broussard replied yes; however, not the same magnitude of the concentrated events. He added that the people causing destruction are not vagrants; they are event participants who have had too much to drink.

Mrs. Palmer pointed out that some of the photographs distributed by Dr. Broussard show damage to his property caused by skateboarders. Dr. Broussard agreed and said that is another problem they are experiencing. Dr. Broussard asked his maintenance person to elaborate on some of the problems experienced.

Bruce Vallee, ASC/Florida Eye Associates, discussed problems experienced on the property during the St. Patrick's Day event, noting that he called 9-1-1 several times. Regarding an event held on a Friday, a Police Officer told him that four officers are not enough to patrol the crowd. The officer did not arrest a person for public urination because "that would leave only three officers covering the event." He added that the officer encouraged him to appear before Council and request additional coverage.

Vice Mayor Contreras asked if this incident was reported to Chief Reynolds. Mr. Vallee said no and added that all information was supplied to the officers on the scene. Mr. Contreras pointed out that there are protocols in place to engage more police presence if required. Forums are available; telephone calls should have been made, etc. He said the Police Department can not take action if they are not aware of a situation.

Dr. Broussard and Mr. Vallee said their issue is not with the Police Department. They simply want Council to realize that the police on the scene felt they needed more help.

Mr. Contreras said improved relations are needed. This is a lesson learned; the photos tell the tale. The City needs to ensure that for the next event there is significant coverage to handle the crowd and any potential personal or business damage.

Mr. Vallee stated that Downtown events are good, adding that ASC cooperates with the Art Festival. ACS's problems are with recent events; the amount of alcohol consumption and the attitude of the people consuming.

Mr. Palmer stated that regardless of whether or not there is an event, drunk and disorderly conduct should not be tolerated anywhere under any circumstances.

Mrs. Poole stated that a solution is to have the event organizer pay for extra police. Mr. Palmer added that eight to ten Police Officers should be provided for each event to control such situations.

Mrs. Palmer asked Mrs. Wysor if there is a ratio of Police Officers per population assigned for these events.

Mrs. Wysor advised that the Police Department makes its determination based on the size of the event area, expected attendance and whether alcohol is involved. The Friday Fest and the Meg O'Malley's events are being mixed. The four officers for Friday Fest

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are based on reports from the officers/supervisors that work the event who confirmed that four officers are sufficient. She stated that this obviously needs to be reviewed.

Police Chief Reynolds asked Dr. Broussard to call the Police Department with problems experienced. In considering approval of each event, the Police Department considers complaints received about previous events. The point of view of the property owners, the event organizers, and that of the Police Officers often differs regarding the outcome of an event. The officers' reports and information from people who experience problems because of the events help with staffing of future events.

Mrs. Poole stated there are only so many Police Officers to patrol the entire City. All of the officers can't be called in for a large event; however, more than four are needed.

Chief Reynolds stated there are times when competing events make for tight coverage. However, increasing from four to six officers with a supervisor would adequately staff the event. Police Department policy is any assignment of more than four officers includes a supervisor. He confirmed for Mrs. Poole that the City does not have a paddy wagon.

Mrs. Walker asked if the City must allow all of the Downtown events that are conducted and whether the DMA is requesting the events. Mayor Buckley responded that this is a constitutional rights question. If we allow one event we must allow all of the others.

Mr. Gougelman elaborated. There are certain events that everyone seems to like; however, there are events that a significant number of people would prefer not occur. That puts the City in a position of being judge and jury. It places the City in a position of allowing some groups to exercise their rights on the street and prohibiting others. The record of municipalities prevailing in Federal Court to pick and choose events is not favorable. He discussed the Cannabis Action Network (CAN), which has held events in Melbourne, taking Gainesville to the Federal Appellate Court in Atlanta because they were prohibited from holding a "pot rally." The Court of Appeals ruled that Atlanta violated the group's constitutional rights and directed Atlanta to allow the event to occur.

Mr. Gougelman continued, stating the key is to make sure the City provides adequate enforcement. He said, as Mr. Palmer pointed out, event or no event, drunkenness and public urination are not acceptable. The question is how to protect private property, preserve peoples' constitutional rights to gather and exercise free speech, and protect law abiding citizens from those who get out of control.

Mrs. Walker asked if there is a way to have a description of what would be allowed. Mr. Gougelman replied there is a problem with describing what is/is not acceptable. If you discriminate, you are headed for problems. There could be a simple description of what is acceptable. What is not acceptable is an event that violates the law; people urinating on the street, harassment, etc. He does not believe that event organizers sanction these actions and that they would say violations are for police enforcement.

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Mrs. Poole stated she believes Meg O'Malley's has been given special privileges. Referencing fencing of the City parking lot for the St. Patrick's Day event, she stated this is beyond what other merchants are allowed to do.

Mrs. Hand asked, based on Mr. Gougelman's discussion of the cannabis event, whether the City must allow alcohol at these events.

Mr. Gougelman said that cannabis and alcohol are two different things. The CAN event was a classic first amendment, free speech activity. The group advocates legalization of marijuana; however, any use of cannabis would have resulted in an immediate arrest. There is a difference between that versus holding a social event where patrons are getting drunk and disorderly. He does not believe that the City Clerk's office, in issuing the special activity permit, sanctions drunk and disorderly conduct. Those are the things that are causing complaints. This is a Police Department problem, they must decide the number of officers needed for an event and they must be allowed great deference in making the decision of whom to arrest, the proper time, etc.

Mrs. Hand again asked whether alcohol must be permitted. Mr. Gougelman responded yes. There are bars in Downtown Melbourne that are lawfully permitted by the State of Florida through licensing and by the City of Melbourne with conditional uses. Alcohol could be forbidden on the streets, such as the beer tent at the Melbourne Art Festival; but that would not stop people from getting drunk and out of control. He said that forbidding alcohol from all events would not solve the problems. If you pick and choose between the Melbourne Art Festival's beer tent versus a Meg O'Malley's (a legally constituted bar in the community) event, you would be sliding down a perilous slope.

Mr. Schluckebier stated that a lot of good information is being exchanged and Council is being enlightened. He has some ideas about how this may be resolved through the current permitting process, with the allowance provided by the City Attorney.

Mrs. Poole stated that Friday Fest starts out great as a family affair from 6-9 p.m.; however, when Friday Fest concludes, Downtown bars stay open until 2:00 a.m. and people get out of control. She also pointed out that parking in the area is horrendous during these events.

Bryan Royea, Kendall Towing and Recovery, 711 Washburn Road, discussed recent Downtown events and the number of vehicles towed from Dr. Broussard's property. He stated there are tow away zone signs posted; however, people ignore the signs. When property is damaged, the owners have no choice but to have the vehicles towed.

Marie Slaney, Florida Eye Associates courier, stated she drives New Haven Avenue at least ten times a day. At 5:00 a.m. following an event, she sees the trash and smells the urine. She said no one is against Downtown events, they are good for everyone. However, problems occur when the event is over and people don't go home. Ms. Slaney stated more police protection would make it better.

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Jackie Lepper, 2012 Goff Place, stated she has a different perspective. She walks daily in Downtown Melbourne and has a close-up view. She complimented City workers for cleaning New Haven Avenue and the Downtown area. However, they do not cover enough area. Toward Melbourne Avenue the cleaning stops. And not all of the trash is from Downtown events. Mrs. Lepper stated that the trash problem may not be as important as public urination; however, the trash in the area looks terrible. She volunteered to pick up trash along the street if someone would provide her with a trash poker. Mrs. Lepper advised that the only property damage she has experienced is from people parking their vehicles on her lawn during the Melbourne Art Festival.

Mrs. Lepper concluded by stating there are three factions involved; the businesses that are directly/indirectly involved; the residents surrounding the Downtown area; and City staff responsible for maintaining order or clean up. It is everyone's responsibility to some degree; there must be a balance between these three groups. We need to work together to solve the problems.

Mrs. Palmer asked Mrs. Wysor about the boundaries for clean up which event organizers are responsible. Mrs. Wysor responded that clean up consists of the event area as presented, plus public parking lots in the Downtown area. Clean up is not extended to the streets beyond the barricaded areas in the permitting process.

John Burr and Scott Marathas, Meg O'Malley's, 812 E. New Haven Avenue, came forward. Mr. Burr stated he owns Meg O'Malley's. He and his partner Scott, as well as two other partners, have families in Melbourne. They employ 60 people at the restaurant. He does not take tonight's allegations lightly, he gives serious consideration to everything that Meg O'Malley's does. He wants to run a good restaurant and be an important part of the Downtown community. He takes his obligation to maintain the cleanliness of Downtown very seriously all year round. Two days a year they operate a special event. Mr. Burr stated there are several differences in the events being discussed. He provides more than four Police Officers for his events. He noted that he hires ten prison guards as back up to the Police Officers. They I.D patrons and place non-transferable wristbands on those of legal drinking age.

Mr. Burr stated that during these events Meg O'Malley's has a large responsibility to the Downtown area. Fencing is provided to keep people from spreading debris throughout Downtown and to help the Police Officers control people exiting/entering the event area. He explained the process he must follow to sell alcohol during a street event. He added that if Dr. Broussard has trouble with people on his lot, he could provide temporary fencing to assist him. He does not want to be a bad neighbor. Mr. Burr concluded stating that he would go the extra step to take care of any problems with the neighbors. He commented that he contacts the City's Clerk's office following each event to see if any complaints have been received.

Mrs. Walker asked about the prison guards. Mr. Burr stated they are maximum security prison guards hired to help keep order and check I.D.s. He stated that if a Police Officer sees someone drinking that is not wearing one of the wristbands, it is that officer's duty and obligation to make an arrest. The security guards can't arrest anyone; however, they

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will definitely take a beer away from anyone that is not old enough to drink and ensure that no one leaves the event area with a drink. He said he tries hard to clean up after the event, adding that he has contracted with Coast to Coast to clean up the streets following his events. He commented that the pictures presented by the doctor were taken before clean up of the event area had begun.

Mrs. Palmer asked if Mr. Burr had contacted Dr. Broussard. Mr. Burr responded that this is totally new to him. If Dr. Broussard had advised him of problems, he would have gladly acknowledged them and attempted to fix them any way he could.

Responding to Mrs. Palmer, Mrs. Wysor advised that Dr. Broussard's request to appear on the agenda was the first she was aware he was unhappy with the events Downtown.

Mrs. Palmer stated she is sorry that Mr. Burr feels he is being singled out. There are on-going problems with a lot of the events. His event was so large the problems are probably magnified.

Mr. Burr discussed the insurance waiver referenced by Dr. Broussard. Dr. Broussard allows the Melbourne Art Festival to use his property so they provide an insurance waiver for people who walk on that property. He stated he would do the same. People who allow Meg O'Malley's to use their property are provided with an insurance waiver.

Mr. Contreras stated this is not an isolated event based on Meg O'Malley's operation. In past events, there has been dialogue, compromise, etc. Significant dialogue is needed between Mr. Burr and Dr. Broussard. Beyond that, there should be dialogue executed by the City Clerk's office, the Police Department and various entities to resolve these issues.

Mr. Burr informed Mrs. Poole that he has owned Meg O'Malley's for four years. Mrs. Poole referenced the problems experienced with one of his street events in 2002 and the slow payment of a fine that was levied.

Mr. Burr stated that he did not pay the fine until his next event. He further advised that there is no charge for patrons to enter his events. The fence around the parking lot is to control the alcohol and maintain the debris. He stated if the events were held only to profit Meg O'Malley's, they would not occur. Meg O'Malley's profits from discussion and the word of mouth advertising that occurs throughout the year about the events.

Mrs. Poole responded that there is no way that fencing the parking lot could take care of thousands of people. Mr. Burr responded that approximately 500 people attended the actual St. Patrick's Day event. It was smaller than anticipated due to the rain that began at 6:00 p.m. He stated at the parade and the Saturday night party there were probably 5,000 – 7,000 people. Meg O'Malley's did not host an event on Sunday.

Mr. Marathas explained the St. Patrick's Day festivities; the 2:00 p.m. parade for kids and families with approximately 90 participants, and the night time activities for adults. He stated they are trying to give back to the community. He pointed out that they do serve alcohol; however, Meg O'Malley's is a restaurant, not a bar.

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Mr. Schluckebier stated that he does not take Dr. Broussard's concerns lightly. There is a misunderstanding of staff's recommendation. He said that Mrs. Lepper's idea of a three party arrangement is a good idea. The City is providing permitting and trying to adapt the facilities to ensure adequate coverage; however, it is clear from the complaints that we are not. He encouraged Dr. Broussard to meet with the DMA to explain the perceived problems. Mr. Schluckebier stated we are ready and willing to work with the property owners and merchants to alleviate and overcome these problems.

Mrs. Poole stated that she thinks we are so eager to get people into our area that perhaps we have gone overboard with the number of events permitted. She noted that a lot of the shops close during the events. She suggested keeping the two art festivals and cut back on the number of Friday Fests and other activities.

Mayor Buckley advised that picking the events would be difficult.

Dr. Broussard stated he does not propose banning the events if adequate protection is provided.

Richard Bailey, co-owner Just for You Estate Jewelry, 829 E. New Haven Avenue, stated the problem is not the event. He takes exception to the attorney's perception that alcohol must be permitted. He stated merchants close because of the drunks that attend these events. Mr. Bailey stated the City should not allow a variance from the City Code allowing open containers. This is his perceived opinion of what is going on, and he stated that a survey of the Downtown merchants would find the same opinion. The Downtown Melbourne Association is not the total voice of the Downtown area. By his calculation probably less than 10% of the merchants belong to the association.

Mrs. Palmer asked Mr. Bailey if he experiences the same sorts of problems with all of the events. Mr. Bailey responded not with the fall art festival where no alcohol is allowed. He stated that the Friday Fest has improved; however there are still urination and vandalism problems. He stated that the City's variance allowing open containers for the events is the problem; otherwise it would be clear cut for the Police Department to take action.

Mrs. Palmer asked Mr. Bailey if he receives a good response from the Police Department when he makes complaints. Mr. Bailey stated that in November he received an immediate response.

Discussion continued briefly. No formal Council action was taken.

17. SITE PLAN APPROVAL SP-2003-02 (MELBOURNE MANOR HOTEL ADDITION): (Public Hearing) A request for site plan approval to expand a small motel in the downtown redevelopment district by adding five additional rooms on a 0.19-acre lot, zoned C-3 (Central Business District) located on the south side of New Haven Avenue, east side of Brecht Court, and west of Front Street. (Owner/Applicant - Renita Buchanan) (Planning and Zoning Board - April 3, 2003)

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Mrs. Braz reviewed the agenda report. The Planning and Zoning Board recommended approval of the site plan for Melbourne Manor, consisting of a one-page plan prepared by W.A. Sutherland and Associates, Inc., of Miami, Florida, with Job No. 02901, subject to the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the City 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 Planing Agency, and the City Council. A substantial change includes, but is not limited to an increase in the number of hotel rooms, requiring additional parking.
- b. Stormwater retention shall be provided for the additional impervious area per City Code, Chapter 27, and as approved by the City Engineering Department.
- c. Relocate or replace the existing drainage pipe extending from the east to west property boundaries in a public right-of-way and/or provide an easement for any replaced drainage pipe. The stormwater maintenance agreement shall include provisions for the drainage pipe.
- d. Eliminate wheel stops and replace with a continuous curbing.
- e. Provide for code compliant solid waste disposal containers meeting the approval of the City's Solid Waste Management Division.
- f. Provide for payment into the Downtown Melbourne Parking Trust Fund for all code required parking spaces not provided on site or provide acceptable off-site parking. Any off-site parking shall comply with the standards of City Code, Appendix D, Chapter 5, Section 9.75.
- g. The applicant's plan is subject to approval of variances for a drive aisle less than 24 feet in width and one 10-foot parking space.
- h. The design must be approved by the Architectural Review Board.

Mayor Buckley opened the public hearing.

Renita Buchanan, owner, agreed with the stipulations.

Mrs. Poole stated that the applicant requested a variance from the Board of Adjustment and was told to go look at the plan again because it was too dense for the size of the property.

Mrs. Buchanan confirmed that the Board made that suggestion. She decreased the number of rooms based on her personal feel for the area and the property. This is not a daily motel. She operated the same type of business for 13 years in Homestead, Florida.

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Most of her customers stayed a minimum of two weeks and some stayed 13 years. She believes this is a nice situation that will be good for the Downtown area.

Mrs. Poole and Ms. Buchanan briefly discussed oak trees in Downtown Melbourne. Ms. Buchanan stated that she objected to live oak trees because they grow extremely tall in a short time and the root system tears up the foundation. She added she is a landscape person and listed the varieties of smaller trees she decided to try. They are more adaptable to the small acreage she has. She wants to create a park situation for her tenants.

Mrs. Poole referenced the site plan. A variance is needed for a 16' wide, two-way drive because 24' is required. This is a self-imposed hardship. She discussed other variances approved regarding backing into the right-of-way, a variance for a 10' parking space (not an employee parking space) and three additional parking spaces, all in a 16' drive aisle for five additional rooms. She stated that traffic in the area is already congested, and noted that Melbourne Avenue is a hurricane evacuation route from the beach. She asked how many more Code required parking spaces the applicant will pay for through the Downtown Parking Trust Fund. This is not identified in the information provided to Council. She discussed the flooding problems currently experienced in the area, the need for sufficient trash disposal, and the discrepancies in the square footage of the existing structure and the proposed addition.

Mrs. Braz stated that the applicant is adding a second story. This went to the Board of Adjustment quite a while ago as a more intense proposal. The applicant reduced the number of rooms from eight to five. The garage area is a garage, and the second floor above the garage is where the five rooms will be constructed. The proposed five rooms will increase the total to 12 units in this hotel. The existing structure is partly three-stories already. The elevations appear to be two stories over a parking garage.

Responding to Mrs. Palmer's questions about parking spaces, Mrs. Braz advised that the applicant is reconfiguring the front. There are currently seven parking spaces across the front; however, they had to add a handicapped space and an elevator and some parking across the front was lost. Three spaces were added to the parking garage. This puts them back to where they were before they lost the space for the handicapped accessible requirements. The applicant must buy into the Downtown Parking Fund for the five parking spaces that they don't have.

Mrs. Palmer said they would pay into the fund; however, they won't have parking spaces for these rooms. Mrs. Braz stated that is correct.

Mrs. Poole stated none of the figures coincide on the site plan and asked for clarification.

Ms. Buchanan explained the current configuration of the two-story manor. The first floor is parking and then there is a second floor. They plan to add a rectangular shape to the back. The second building will only have two floors. It will be a "Key West" style with parking underneath the building. The 16' drive aisle will only access three parking spaces. The remainder of the guests will use Brecht Court.

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Mr. Palmer stated that the number of additional parking spaces required is five and the number provided is zero. Ms. Buchanan responded that she has provided seven spaces. She stated that the Board of Adjustment would not allow 9' or 10' parking spaces. Her only option was to buy into the Downtown Parking Trust Fund. She preferred to provide 10' parking spaces on site; however, a variance would have to be granted.

Mrs. Poole noted that 10' parking spaces were needed because of the 12' needed for the handicapped parking space. She stated currently there is no parking garage and asked that in the meantime, where guests will park. Ms. Buchanan stated that the parking space she is buying into is the public parking on Front Street.

Mrs. Braz explained that Ms. Buchanan is buying into public parking as the Code allows. This would include parking at Front Street Park, Bean Park, and on-street parking. Mrs. Poole responded that the Code needs to be changed.

Ms. Buchanan stated that her neighbor Mr. Hynes has been allowed 10' parking spaces; however, she was not granted that same privilege. She is adding 2,300 s.f. Her plan is to have 12 rooms.

Mr. Palmer stated he thinks this is too much building in too small of an area. It is detrimental to safety. A 16', two-way drive is not safe. He cannot support this.

Moved by Poole/E. Palmer for denial. Motion carried. (Mayor Buckley voted nay.)

18. SITE PLAN APPROVAL SP-2003-06 (ST. JOHNS EPISCOPAL CHURCH): (Public Hearing) A request for site plan approval for a church on 9-1/2 lots, consisting of 2.9± acres, zoned C-R-2 (Cap 6) (One, Two, and Multiple-Family Residential with a cap of six units per acre with a conditional use for a church) located on the north and south sides of Young Street, west of Water Street. (Owner - St. Johns Episcopal Church) (Applicant/Representative - Herb Sands) (Planning and Zoning Board - April 3, 2003)

Mrs. Braz reviewed the agenda report. The Planning and Zoning Board recommended approval of the site plan for St. Johns Episcopal Church, consisting of a two-page plan prepared by Teimouri and Associates of Melbourne, Florida, with Project No. 2002-124, dated 3/24/03, subject to 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 in the primary building setbacks from side lot lines; 2) the addition of a driveway not shown on the site plan; 3) any increase in building height not permitted by City Code, Appendix B, Article XVIII (9); or 4) the use of the portion of the property south of Young Street for additional buildings other than for the pavilion shown on the site plan.

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- b. All trees 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 Compliance personnel and an evaluation shall be made to determine the possibility of saving trees by shifting the building pad or drives. All trees to be preserved must be protected by barricades during construction.

Responding to Mrs. Poole, Mrs. Braz confirmed that there is a tree survey of the parking area.

Herb Sands, Architect, Church representative, stated there are 128 trees on the south side of Young Street, and at least 100 will remain. The north side, which contains the 100-year old chapel, is covered with huge oak trees that will all be kept. He advised that the back-out parking onto Young Street is being removed and all parking places will be curbed and properly exited and landscaped. The south site is covered with hickory trees. A few trees that are not doing well will be removed and some huge stately palm trees will be transplanted on site. He reported that parking will basically be on Sundays. The Church has a pavilion and picnic tables on the site; it has always been and will basically remain a park. If this site plan is approved, it locks that in forever.

Mr. Sands agreed with the stipulations. He added that this is a huge project that will require phasing; the Church will proceed as funding is available. It will be a great project for the Eau Gallie area.

Moved by Hand/E. Palmer for approval subject to the proposed stipulations. Motion carried unanimously.

Council convened as the Babcock Street Community Redevelopment Agency for the following item:

19. COUNCIL ACTION RE: Babcock Street Median Project - Agreement between Brevard County School Board, the City of Melbourne, and the Babcock Street Community Redevelopment Agency.

From the agenda report: This item is for the approval of an agreement with the Brevard County School Board to allow the City to modify the driveways and install landscaping and irrigation as part of the overall Babcock Street Median Project on the Melbourne High School property. The City Council/CRA approved the redevelopment project and awarded the bid on October 22, 2002. The Brevard County School Board will consider this agreement at their next meeting.

Moved by Poole/Contreras for approval of the agreement between the Brevard County

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School Board, the City of Melbourne, and the Babcock Street Community Redevelopment Agency. Motion carried unanimously.

City Council reconvened.

City Council action was also required on the above item (Item 19).

Moved by Poole/E. Palmer for approval of the agreement between the Brevard County School Board, the City of Melbourne, and the Babcock Street Community Redevelopment Agency. Motion carried unanimously.

Recessed: 11:06 p.m.
Reconvened: 11:11 p.m.

20. COUNCIL ACTION RE: Budget Format Policy and Related Fiscal Issues.

From the agenda report: The purpose of this item is to present Council with several ideas for consideration and to request direction from Council as staff prepares the Fiscal Year 2003-2004 Budget.

The budget document is huge, over 600 pages. Proposed is a revised budget format, which is expected to reduce this document by half. The purpose is to provide meaningful information from which to make decisions. Instead of a fund by fund presentation, proposed is a department by department presentation. At a glance it is clear the functions handled by each department and the resources needed to provide these services.

The information included represents Melbourne's fiscal condition and expectations for next year's budget process. These revenue expectations are presented in three categories: 1) No Growth, 2) Nominal/Minor Growth, and 3) Full Growth and Enhancements. No growth would require a reduction in our existing programs. Nominal/minor growth would enable the City to maintain current service levels. Full growth and enhancements would enable the City to maintain current service levels and provide for program improvements or capital improvements.

It is also our intention to bring a separate agenda item for Council discussion and policy direction on the topic of fund balances and reserves at the second meeting in May.

Mr. Schluckebier reviewed the agenda report and his recommendation. The current budget is more fund driven. That doesn't help clarify issues or assist Council in making decisions. He believes staff can deliver a better product with a different format.

The second item in the agenda is to discuss some level of buy in from Council. He stated he could make a strong case to move to a level of revenue for next year that is a full growth and enhancements option. However, he also knows that the County and City are looking at sales tax. If that occurs with the current service level approach, Council would have sufficient funding to very adequately meet needs. If that does not occur, Council

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should consider returning during the next fiscal year, to address the unmet needs. He stated he is not recommending a no holds barred, tax the world. He has recommended a current service level where he has tried to identify the revenue issues Council will face.

One issue is some level of revenue equivalent to a 7% beyond roll back property tax. That doesn't necessarily mean that one; but it should be that level of increase. It is a million dollars beyond the normal fee increases and revenue that you would expect. That is needed as a core minimum.

Third, for planning purposes Council needs to adopt a budget calendar. There is a perpetual scheduling problem on the formal hearings because of County budget meetings, and by law the County has first choice. The City is not allowed to hold its budget public hearing in conflict with the County.

Moved by Contreras/C. Palmer to endorse the revised budget format. Motion carried unanimously.

Moved by E. Palmer/Walker for approval of Option "B" (Nominal/Minor Growth in Services Option).

Council Members expressed concern about the tax increase percentage.

Mrs. Poole stated she could support 6% based on all of the unfunded needs. Mr. Schluckebier said there are too many unfunded needs and we also have to find \$800,000 to build a pool.

Mrs. Hand stated she has questions about the pursuit of a water utility tax. Mr. Schluckebier stated we are saying we need to find an additional new level of recurring revenue that is about \$900,000 to \$1 million per year. Property taxes can be increased or Council can impose a tax on water sales, which Melbourne has not done this. He stated that Council has several revenue raising choices and he could find some others, referencing the stormwater fee levied by the City. Several cities transfer utility profits. He stated there are alternatives to property taxes.

Mayor Buckley stated he is opposed to any taxes on water sales after we have raised them twice. He prefers an increase in property taxes.

Mrs. Poole commented that the people expect Council to increase the property tax because we have held the level for six years. Mrs. Hand and Mrs. Palmer agreed.

Mr. Schluckebier stated he understands not going beyond the scheduled utility rate increase, and he is aware that there was an extraordinary utility increase last year.

Mrs. Palmer referenced the proposed adoption of an increased sales tax and asked how that would factor in Option "B."

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Mr. Schluckebier stated that the sales tax, in addition to Option “B”, would leave the City in a very adequate funding position for several years. The difficulty with the sales tax is that the voters won’t decide the issue in time for the City to make financial plans for next year. The anticipated revenue is \$4.6 million per year. Right now the City is spending between \$500,000 and \$1 million a year in general government revenue on capital programs. That would help a lot. But the \$4.6 million per year begins next year and is largely dedicated to those things you intended to do but would have had to raise other property taxes to do them.

Mrs. Palmer stated this would mean we wouldn’t go to the General Fund for operation. Mr. Schluckebier stated that is correct, it would be capital. He said in that arena, there is general government money that Council had planned to spend on that. It does give you some flexibility. Mrs. Palmer asked with Option “B” whether staff has looked at any options for cutting anything.

Mr. Schluckebier said cuts have and will continue to occur. It means that every dollar being spent for operations this year may not be spent next year. Things are being done differently. He briefly discussed changes to the Police Department’s overtime budget, stating that a legitimate concern of the Police Department’s is there is not enough patrol people. However, we need to redirect scheduling so we are not paying 150% in overtime rates towards those several thousand hours. Mr. Schluckebier commented that the overtime in this City exceeds \$4,000 per day. He added that the budgets of several departments are being reviewed.

Mayor Buckley stated that the proposed budget workshop dates are July 29 and 31. The proposed public hearing dates are September 10 and 24; however, Council discussed several dates for the public hearing and agreed upon September 16 and 30.

The question was called for approval of “Option B.” Motion carried unanimously.

Moved by E. Palmer/Walker to approve July 29 and 31 for Budget Workshop meetings and September 16 and 30 for Budget Public Hearings. Motion carried unanimously.

21. COUNCIL ACTION RE: Board Appointments

- a. Babcock Street Community Redevelopment Agency Advisory Committee - four regular members; two alternate members

Moved by E. Palmer/Hand to reappoint Ken Allen, Richard Ennis, Karen Harshaw and Robert Jensen. Motion carried unanimously. (Terms: May 4, 2003 – May 3, 2005)

Moved by E. Palmer/Walker to reappoint Nancy Dukeman and John Edmiston. Motion carried unanimously. (Terms: June 8, 2003 – June 7, 2005)

- b. Building Board of Adjustment and Appeals - one alternate member

Mrs. Palmer nominated Clayton Bennett.

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

Moved by Hand/Contreras to appoint Clayton Bennett. Motion carried unanimously.
(Term: April 22, 2003 – December 13, 2003; unexpired two-year term)

c. Citizens' Advisory Board - one regular member

Moved by Poole/E. Palmer to appoint Eugene Lathrop as the regular member. Motion carried unanimously. (Term: April 22, 2003 – November 11, 2003; unexpired three-year term)

Moved by Contreras/Hand to appoint Ricardo Rangel as the (second) alternate. Motion carried unanimously. (Term: April 22, 2003 – November 11, 2004; unexpired three-year term)

22. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Poole referenced changes that Dr. Richard Hynes has made to the Causeway Center site plan. She expressed support for the site plan returning to Council for review.

A brief discussion followed regarding the archaeological findings on the site. Mr. Schluckebier replied that the City has not received the report; however, the City has been verbally told that there are no findings of historical significance. The State of Florida has a period of time in which to accept/reject that conclusion.

Attorney Gougelman said that the State apparently does not feel this is a concern for the City. If we are expected to stop development because of archaeological treasures worth saving, then the permitting jurisdiction should be involved in that process. And, the State of Florida has not seen fit to favor the City with a notice of this situation.

23. ADJOURNMENT

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

The meeting adjourned at 11:45 p.m.



Acting City Clerk – 5/7/2003

Approved by Council: 5/13/2003