

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

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

1. Reverend Joshua Gee, Agapé Community Church, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Richard Contreras	Vice Mayor, District 1
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Council Member, District 5
	Loretta Isenberg-Hand	Council Member, District 6
	Jack M. Schluckebier, Ph.D.	City Manager
	Paul R. Gougelman, III	City Attorney
	Amy W. Elliott	Assistant City Manager
	Cathy L. Baker	Acting City Clerk
	Peggy Braz	Planning & Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented the Blanche Hopkins Memorial Beautification Award to Coedell Mead, Melbourne Garden Club and introduced the Club members. Additionally, Mayor Buckley presented Ms. Mead with a proclamation for “National Garden Week” June 1-7.

Mayor Buckley presented proclamations recognizing Melbourne Central Catholic High School boys and girls soccer teams for their State Championship titles. The proclamations were accepted by Coach Scott Armstrong and the MCC Girl Hustlers Soccer Team, and Coach Robin Chan and the MCC Hustlers Soccer Team.

Mayor Buckley presented a proclamation for “Management Week”, June 2-7; accepted by Mike Woolley, Awards Chairman, Florida Space Coast Council, National Management Association.

5. APPROVAL OF MINUTES - Regular Meeting May 13, 2003

Moved by E. Palmer/Contreras for approval of the May 13 minutes. Motion carried unanimously.

6. CITY MANAGER’S REPORT

Mr. Schluckebier briefly discussed the status of the Brevard County one cent sales tax

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

issue. The County Commissioners are not ready to move forward with the process because County staff has not prepared their project list and this may take until July. He said the School Board indicated they will move forward with or without the County's participation. He added that City staff continues to work cooperatively with County staff.

Mrs. Poole asked if all cities had prepared a project list. Mr. Schluckebier stated enough cities are participating for the County to move forward. The Cities of Melbourne and Palm Bay meet the requirement for participation of at least one-half of the County's population.

Mr. Palmer asked if the revenue from the sales tax would be allocated to just those cities that participate. Mr. Schluckebier responded that the agreement proposed by the County does not reward/penalize any city for participation/non-participation, it is a straight population formula sharing allocation.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2003-28 REZONING REQUEST (Z-2002-948): (Second Reading/Public Hearing) An ordinance to change the zoning from R-1AA (Single-Family Residential) to C-1A (Professional Offices and Services District) on three lots and a portion of a fourth lot consisting of .478 acres located on the east side of Airport Boulevard, south of Fee Avenue. (Owner/Applicant/Representative – Donald Frederick, President, Private Mortgage Acquisitions Corp.) (First Reading - 5/13/2003)

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

Moved by Hand/Walker for approval of Ordinance No. 2003-28.

Mrs. Poole asked the percentage of residential/commercial properties on Airport Boulevard. Mrs. Braz responded that she is not sure; however, a good estimate would be 50/50.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

9. ORDINANCE NO. 2003-29 (ED-2003-01): (Second Reading/Public Hearing) An ordinance granting an Ad Valorem Tax Exemption for a period of four years totaling an estimated \$32,476.60. (Applicant - Liberty Aerospace, Inc.) (First Reading - 5/13/2003)
Mr. Gougelman read the ordinance by title. There were no public comments.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

Moved by Contreras/Hand for approval of Ordinance No. 2003-29.

Mr. Palmer asked how the City will determine that a company meets the requirements for the tax exemption over the four-year period, and if the City would send someone to review the company's records or wait for the annual report.

Mrs. Dittmer stated that the companies must submit an annual report by January 15 each year. These will be brought to Council for review. Discussion followed regarding companies presenting an oral report to Council; however, it was agreed that the reports should be submitted at the City staff level.

Mr. Schluckebier reported that the County has rescinded about half of the exemptions they issued because the companies don't meet their requirements.

Mrs. Poole asked whether City staff would do any inspections and stated somebody should visit the site. Mr. Schluckebier responded the City would certainly be doing due-diligence.

Mrs. Poole asked if the County got money back from any company that had its exemption rescinded. Mr. Schluckebier explained that the exemption is a benefit based on performance; the benefit comes after the performance. The exemption would not be granted for the following year.

Mr. Gougelman confirmed for Mrs. Walker that staff will ensure that companies comply with the formula set up by ordinance. If they don't, staff will proceed to the next step and conduct an on-site audit. The company does not have to submit to this; however, if they want an exemption they must provide proof that they meet our requirements.

Mr. Gougelman said that if the company turns in a report that shows they meet our requirements they get the exemption. Next year if the annual report shows they don't meet our requirements, staff will recommend that Council rescind the exemption.

Mrs. Poole questioned whether the 64 new employees would come from Colorado with the company. Mrs. Dittmer responded that two employees will come with the company and 62 will be local hires. Mrs. Poole said if the company fails they could lay off workers without the 60-day notice because they employ less than 100 people. She discussed her concerns and stated there is no guarantee for the employees.

Responding to Mrs. Poole's question about the EDC comment that the company will indirectly provide 88 additional jobs, Mrs. Dittmer explained that the wages of the 64 jobs will produce an income to the area that will create the need for other goods and services, such as restaurants, etc.

Mrs. Palmer stated she is concerned about how many people will be hired from this area. She asked that the application be revised to include the number of jobs to be filled by local residents. Mrs. Dittmer reported the supplemental application asks for the number of full time employees employed in Florida. This company has a net increase of 62 jobs. She

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

added that the application can be revised to include expected number of employees that will move with the company. Mrs. Palmer responded this information would be helpful to Council. Mr. Gougelman confirmed this change could be made.

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 said her nay vote is based on many other companies locating in Melbourne without receiving tax abatements.)

10. ORDINANCE NO. 2003-30 ZONING CODE AMENDMENT (Z-2003-949AD)
DOWNTOWN EAU GALLIE OVERLAY DISTRICT: (Second Reading/Public Hearing)
An ordinance amending City Code, Appendix B, Article XVIII, Supplementary District Regulations (8), creating an overlay district and regulating the height of structures in the Olde Eau Gallie Redevelopment Area. (First Reading - 5/13/2003)

The attorney read Ordinance No. 2003-30 by title. There were no public comments.

Mrs. Poole said she received a call from John Saunders expressing concern with this ordinance. She also received a call from the Idens who live close to the area. They said they and many people in their area are concerned.

Mr. Palmer stated he received a letter from Mr. Saunders asking for answers to numerous questions about this issue. He is definitely concerned about the number of stories allowed for some of the buildings in C-3.

Moved by Hand/Contreras for approval of Ordinance No. 2003-30.

Mr. Palmer referenced St. Paul's United Methodist Church on Highland Avenue and stated that currently the church could build up to 80'. This ordinance will restrict that height to 40'; however, another area on the river will be allowed to build to 80'.

Continuing, Mr. Palmer stated there may be supposition that someone has vested rights; however, he does not think there is any indication that anyone is vested to build to 80', there is no documentation. Council has not approved any 80' buildings in this area.

Mrs. Braz stated that Mr. Palmer is correct about the church property. The building height for property on Pineapple Avenue would be 30', 40' for Highland Avenue, and 50' for Guava Street. As far as the word "vested", that may not be the correct word; however, it is the word used when a project has been presented. Staff must use the current Code when reviewing a development. She said there is no way to know what Council will do a month or two in the future. The developer has the right to rely on what is on the books as they design their project.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

Mrs. Braz stated that the applicant proposing to develop 80' buildings in the area between Eau Gallie Boulevard and Montreal Avenue, east and west of Pineapple Avenue came to the City last fall to discuss what could be developed on that property. Based on that discussion, the applicant purchased the property in January and proceeded with design. In February they brought in preliminary plans for review, and early this month made formal submittal to the Engineering and Planning Departments.

Continuing, Mrs. Braz stated it has always been the City's practice to allow developers to develop under the Code that existed the day the plans were submitted. Plans submitted after adoption of a new Code would be required to meet the new Code requirements.

Mr. Palmer expressed concern about a statement in the agenda package about a vested party to this particular issue. There may be a request to be vested; however, there is no vested right until Council provides it. It could be that Council will not approve the request. The fact that an applicant believes they are vested because they have something on file that says they intend to do something is not sufficient.

Mrs. Palmer asked for an opinion from the City Attorney. Mr. Gougelman stated it is clearly a truism that under our ordinance to be accorded a vested right the request must go through the Planning and Zoning Board and the City Council. The second point is that a Planning and Zoning staff member made a comment about a vested right of a certain party. The fact of the matter is the only way vested rights are accorded is from the City Council. A staff member referring to someone as a vested right party does not matter. The next issue is are they actually vested. As Mrs. Braz said it is more terminology related. He said that Mrs. Braz has seen a number of these cases and can scope out very quickly if an applicant can apply for a vested right. This is not discretionary on Council's part, there is a very strict measuring stick that is used. The City has to accord a vested right if an applicant meets the requirements. In this particular instance, the applicant would more than likely be able to gain a vested right.

Continuing, Mr. Gougelman stated that Mrs. Braz was faced with putting this ordinance together, knowing that this applicant can gain a vested right. She had to consider in developing this ordinance, whether that project would so disrupt the intent of the ordinance that she would remove that little area from the Olde Eau Gallie Overlay District. He stated that Council has the ability to increase that Overlay District; however, what Mrs. Braz is telling Council is that in her professional experience, there is a person who probably has a vested rights issue. He added that should the developer abandon the project, the vested right would go away.

Mr. Palmer responded that vested rights must be determined by Council. He said that an 80' building on the edge of the river will wreak havoc on this redevelopment area, adding that he has major concerns about this.

Mrs. Palmer asked if there are any existing 80' buildings in the redevelopment district. She noted that currently any property owner in the area has a right to building to 80'. The purpose of this ordinance is to restrict that. We are talking about one property rather than the fact that an 80' height restriction is already there.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

Mr. Palmer stated his concern is the way it is presented in the package. Mrs. Palmer said she hoped that red herring won't stop Council from seeing the big picture.

Mrs. Poole stated the current Code allows 80' only with Council approval. Mr. Gougelman confirmed that currently in a C-3 District, there is a height of 40', and with special disposition from Council, an allowance up to 80'.

Mrs. Poole stated that Council is told to be flexible; however, the developers must have flexibility to abide by the law. She said the reason the Downtown Eau Gallie and Melbourne areas are 80' is because they are the two core cities. She added she would hate to think that someone can build up to 80' and Council can't do anything about it. She recalled conversations about casting shadows over other buildings, and stated this ordinance has been a long time in planning. Mrs. Poole and Attorney Gougelman briefly discussed the unsuccessful vested rights lawsuit filed against the City by the Eau Gallie Yacht Basin.

Mr. Palmer stated this discussion could drag; his only concern is that a pending site plan is not sufficient enough to say someone has a vested right.

Mr. Contreras stated this is a lesson learned regarding the use of the term "vested right" and henceforth people will be more learned in the use of that particular term. He agreed that if there are plans submitted and an applicant has designed and developed to current existing standards, it would be prudent that the Planning and Zoning Board and Council certainly take that into consideration relative to the cost associated with the site plan. He said that maybe Council would consider assuming a percentage of the cost factor involved in terms of denying an applicant vested rights.

Mrs. Poole stated cost doesn't matter, a development in Miami lost about \$100 million. She would hate to think that someone would want the City to share in that cost. She said those three buildings at 80' will destroy the effect of the village.

Mr. Schluckebier stated that it is clear that Council will not resolve this particular vested right issue this evening. However, the ordinance before Council substantially does what the community wants and staff continues to recommend adoption. He suggested that instead of revising this ordinance and delaying its implementation, staff could immediately return with an ordinance that would place that same height limitation on the property in question. The issue could be pursued by the affected party at that time.

Mrs. Palmer commented that this particular property has and will continue to have an 80' height allowance.

Mrs. Poole asked why the height limit is being reduced for everyone but this one particular property.

Mr. Schluckebier stated that this ordinance does not present itself with the property that may or may not be vested. He said if the developer is serious about development and vested rights, we will discover that later. That is an anomaly that only occurs if Council grants the

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

vesting.

Mr. Palmer said the agenda package states there is a pending site plan and the owners have a vested interest.

Mayor Buckley said the City Manager is recommending Council move forward with this ordinance which includes all of the property north of Eau Gallie Boulevard. The property south of Eau Gallie Boulevard will be treated as a separate action.

Mrs. Palmer recommended that Council Members decline this ordinance if they do not like the way it is written. She added that Council should not change the ordinance midstream.

Mr. Gougelman explained that Area D is part of this ordinance; however, regarding the height standard it maintains its existing 80' height. The City Manager is suggesting that if Council wants all or a portion of Area D reduced from 80' that it not be done by amending this ordinance. The City Manager recommends adopting this ordinance and directing staff to return with another ordinance to lower all or a portion of Area D.

Mr. Gougelman added that this would not affect the person with the proposed vested right. It would create a pending ordinance that would cut off somebody's right to vest from that day forward. The property in question either does or does not have a vested right at this point. He added that Mrs. Braz seems to think they may. By creating a pending ordinance there is nothing more they can do after tonight to move any further to get vested rights.

Mrs. Braz commented that north of Eau Gallie has a tiered height limitation and questioned whether Council would want some configuration on the south side.

Mrs. Poole asked if tiering on the south side would cut the project for the property in question even though plans were submitted. Mr. Gougelman responded the question is whether the applicant can demonstrate vested rights by things that have already been done.

Moved by E. Palmer/Poole to postpone to the June 10 meeting to obtain more information.

Mrs. Palmer asked what type of information and stated if Council does not want to approve this ordinance, they should vote no.

Mr. Palmer is opposed to giving special treatment to one section of the district.

The maker/seconded withdrew the motion to postpone.

The question was called on the motion for approval. The roll call vote was:

Aye: Walker, Hand, Contreras and Buckley

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

Motion carried.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

Mr. Schluckebier asked if Council's intent is to provide equal regulation of the height limitation across the Eau Gallie area in the same manner as the restrictive ordinance just enacted, without exempting any properties.

Mrs. Braz asked for clarification. Mr. Palmer stated that the entire redevelopment area is to have the same treatment, no area will be left at 80'.

There was a brief discussion regarding existing buildings that would be considered non-conforming.

Moved by Walker/E. Palmer to draft an ordinance as recommended by the City Manager. Motion carried. (Mrs. Palmer voted nay.)

Recessed: 8:55 p.m.
Reconvened: 9:05 p.m.

NEW BUSINESS

11. COUNCIL ACTION RE: Construction Contract Award for Lining Sanitary Sewers to eliminate Inflow and Infiltration, Project No. C03314, Insituform Technologies, Inc., Miami, FL - \$204,022.38.

Mr. Ralls reviewed the agenda report.

Mr. Ralls explained this will reduce inflow of groundwater into the pipes and eases the burden on the collection system. Less groundwater goes to the treatment plant and reduces.

A brief discussion followed regarding the process.

Moved by Poole/E. Palmer for approval of a piggy-back contract with Insituform Technologies, Inc. in the amount not to exceed \$204,022.38. Motion carried unanimously.

12. CONSENT AGENDA:

Moved by Hand/Contreras for approval of Items 12 (a) through (j) as recommended.

There was a brief discussion about item 12(a) and the need to annex the City's water plant into the City.

The question was called. Motion carried unanimously.

- a. Approval of Task Order No. 5 to CH2M Hill's Contract for Preparation of an Emergency Response Plan for the Water Treatment Plant - \$40,000.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

- b. Approval of Task Order No. 6 to CH2M Hill's Contract for Reverse Osmosis Water Treatment Plant Potable Water By-Product Discharge Evaluation, Project No. C03303 - \$38,000.
 - c. Right-of-way Use Agreement with Clipperton Co., Inc. for landscaping at 2425 Pineapple Avenue.
 - d. Purchase of a used 1997 Lull 644B-37 Forklift Truck, Hertz Equipment Rental Corp., Melbourne, FL - \$29,975.
 - e. Purchase of a 2003 Ford Ranger and a light bar, McCotter Ford, Titusville, FL and Law Enforcement Supply, Panama City, FL - combined total cost \$11,827.
 - f. Renewal of an agreement with Brevard County for six School Resource Officers.
 - g. Acceptance of Grant Street Community Center Expansion Feasibility Study and approval to add the proposed Grant Street Community Center Expansion Project to the list of projects for consideration of future CDBG funding.
 - h. RESOLUTION NO. 1824: A resolution authorizing a quit claim deed to Florida Department of Transportation for the City's interest in a Sidewalk Assessment Agreement with Melbourne Central Catholic High School on Babcock Street.
 - i. RESOLUTION NO. 1825: A resolution to implement FY 2002-2003 Second Quarter Budget Review recommendations.
 - j. RESOLUTION NO. 1826: A resolution designating the Mayor as the standing voting delegate at the Florida League of Cities Annual Conference.
13. SITE PLAN APPROVAL SP-2003-07 (OCEAN SIDE VILLAGE, PHASE 3D): (Public Hearing) A request for site plan approval to develop a 110-unit multiple-family townhouse complex in an R-2 (Cap 10) (One, Two, and Multiple-Family Residential with a cap of 10 units per acre) zoning district located on a 13.049-acre parcel on the south side of Eau Gallie Boulevard (SR 518), west of SR A1A, and east of Riverside Drive. (Owner/Applicant - Ocean Side Village, Inc.) (Representative - Robert I. Lee) (P&Z Board - May 1, 2003)

Mrs. Braz briefed Council. The Planning and Zoning Board recommended approval of SP-2003-07, site plan for Ocean Side Village, Phase 2D, consisting of a one page plan prepared by Lee Engineering of Indialantic, Florida, with Job Number 0187-02d, dated 3-03-03, with a revision date of 4-24-03, with the findings contained in the agenda package and the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the City 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

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

substantial change includes, but is not limited to: 1) a decrease of 5% of the open space or vegetative areas on site; or 2) an increase in the number of units shown on the site plan.

- b. All trees and scrub habitat shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve trees. Initially, trees and scrub habitat shall only be removed for driveways, drainage facilities, and or model units. Trees and scrub habitat 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 and scrub habitat. Preserved trees and scrub habitat must be protected by barricades at the drip line during construction.

- c. The applicant shall obtain current appropriate environmental permits from the Florida Fish and Wildlife Conservation Commission to relocate or take gopher tortoises and from the U.S. Fish and Wildlife Service to take scrub jays and scrub jay habitats. Should threatened or endangered species be found on the site after commencement of construction for which a permit has not been granted, the owner/applicant shall cease construction until the appropriate permits are obtained.

Mrs. Braz stated that staff has some concerns about the environmental permits and has asked the applicant to provide the City with a status report to ensure that all permits are still viable, especially for scrub jays and gopher tortoises.

Rob Lee, Lee Engineering, responding to Mrs. Poole stated the total acreage for Ocean Side Village is approximately 147-150 acres. The number of units is approximately 600 single-family and multiple-family dwellings. Mr. Lee reported that the entire acreage of the property has been mitigated for scrub jays and tortoise habitat. He said that Mr. Cochran purchased property in Malabar for mitigation.

Mrs. Poole commented that she thought there was an entire area on the property that would be used for mitigation and as a conservation area. Mr. Lee responded that the State decided they didn't want that. Mrs. Poole responded that is a shame for the environment with all the acreage on this property. Gopher tortoises can be moved; however, scrub jays can't. She added that the beach species is located nowhere else.

Mr. Lee discussed the surrounding properties and said this is a good transitional use. He stated there will be one wet detention pond and a 25' minimum vegetative area around the outside preserving as much scrub habitat as possible. He added that the property is zoned with a cap of 10 units per acre, which would permit 130 units; however, this project proposes only 110.

Responding to Mrs. Walker, Mr. Lee stated that the swale is a grassy shallow area that would be mowable and is for shallow water conveyance. The preliminary design for the

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

swale is about a 1' maximum depth in the center over a 10' area. He added the swale will be contoured and landscaped and will look nice. The homeowners' association will have responsibility for maintenance of common areas, including the swale.

Mrs. Poole commented that in some subdivisions swales have been filled in creating problems for others. Mr. Lee stated that this project is basically a townhouse project and people don't actually have yards. If homeowners want to do a little landscaping around their front entrance that is allowable; however, that is all.

There was a brief discussion about the traffic volume on Eau Gallie Boulevard. Mr. Lee advised that this project will have four entrances, two on Eau Gallie Boulevard, one on Riverside Drive and one on A1A.

There was a discussion regarding the roadway problems of Mr. Kaufman. Mr. Lee stated that Mr. Kaufman is obtaining a permit from the County for Riverside and he must have the road that ties into Eau Gallie Boulevard at that time. The owner and City staff are working on an agreement. Mr. Gougelman stated he would approve the agreement.

Moved by E. Palmer/Walker for approval subject to the stipulations proposed by the Planning and Zoning Board. Motion carried. (Mrs. Poole voted nay.)

14. SITE PLAN APPROVAL SP-2002-05 EXTENSION REQUEST (JORDAN'S LANDING, FORMERLY KNOW AS SUNSET LANDING APARTMENTS): (Public Hearing) A request for site plan approval extension for a 140-unit apartment complex on a vacant 8.015-acre parcel zoned R-2 (One, Two, and Multiple-Family Residential) located on the southeast corner of Wickham Road and Weston Drive. (Owner - Dubloren Finanz-Und Anlagegesellschaft Est., a Corporation of Liechtenstein (Dubloren)) (Applicant - Jordan's Landing, LLC) (Representative - Ms. Renee Sandell of Regency Development Assoc., Inc.) (P&Z Board - May 1, 2003)

Mrs. Braz briefed Council. The Planning and Zoning Board recommended approval of SP-2002-05, site plan extension for Jordan's Landing (formerly Sunset Landing Apartments), as prepared by Cantelou and Powell, Inc., of Melbourne, Florida, consisting of a one sheet plan, with Project Number 03-023, dated 2/11/03, and with a revision date of 3/28/03, with the above findings and 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 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; or 2) an addition of a vehicle access point not shown on the site plan.
- 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 aisles, and retention areas shall be shifted whenever possible to preserve trees.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

Initially, trees shall only be removed for driveways, drainage facilities, and paved parking spaces and aisles. Trees in a 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 trees. Trees to be preserved must be protected by barricades during construction.

- c. Prior to development of the property, the owner/applicant shall provide the City a recent gopher tortoise assessment. If gopher tortoises or active burrows are found on the site, the owner/applicant shall provide an approved mitigation plan and permits from the Florida Game and Freshwater Fish Commission to relocate any gopher tortoises found on the property.

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

- d. The City of Melbourne Solid Waste Management Division must approve solid waste operation receptacles and locations, including dumpsters.
- e. Provide a correct and legally transferable easement for any City utilities located on the property, unless such utilities can be relocated to the satisfaction of the City of Melbourne Utility Department.
- f. The plan with density credits permitting up to 140 units is subject to approval based on the development being operated as a community for elder persons, in compliance with the terms and provisions of the Federal Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act §§ 760.20 – 760.37, Florida Statutes.
- g. The developer and/or successors or assigns will not seek an ad valorem tax exemption on the property.
- h. No head of household will be under 62 years old. All units will be "affordable" with 12 units set-aside for households at 25% of median income; 11 units set-aside for households at 30% of median income; 23 units set-aside for households at 50% of median income; and 94 units set-aside for households at 60% of median income. The project will target seniors who are deaf or hearing impaired.

Discussion followed regarding whether the complex would continue to be for the hearing impaired and elderly. Mrs. Braz confirmed that a certain percentage is earmarked for age 55 and over. She added that this requirement is tied to the variance and staff can also tie that stipulation to the site plan approval.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

Mrs. Walker asked whether the applicant was required to recheck for gopher tortoises and scrub jays. Mrs. Braz responded yes. Since they didn't do construction drawings they may not have brought in permits; however, they will be required to do so.

Moved by Hand/Walker for approval with the stipulations proposed by the Planning and Zoning Board. Motion carried unanimously.

15. ORDINANCE NO. 2003-31 (ED-2003-02): (First Reading/Public Hearing) An ordinance granting an Ad Valorem Tax Exemption for a period of four years totaling an estimated \$274,533.96. (Applicant - Washington Mutual, Inc.)

Mr. Gougelman read the ordinance by title.

Mrs. Dittmer briefed Council. This is an ordinance to approve Tax Exemption ED-2003-02 for Washington Mutual to locate their Southeast Regional Headquarters for financial services at 3990 South Babcock Street (former Wal-Mart site). The company will provide 500 new jobs by the year 2005, with an average salary of \$35,691, and intends to complete \$8.4 million in improvements to the property and bring \$10.5 million in new personal property value to the City. Based upon this information, the Property Appraiser's office has determined that the estimated tax exemption would be \$68,633.49 annually. The City's Program Guidelines indicate that a total of 22 points should be assigned to the company based upon projected employees (10 points), payroll (6 points), and capital improvements (6 points). This is a substantial and highly beneficial investment by a corporation to what is now an "economically challenged" property. Also, the City remains in competition on this property with a site in another state. In the event the Base Realignment Adjustment Commission (BRAC) acts next year in a fashion hostile to Brevard County, the economic base could be significantly challenged. We are very excited that these jobs and value are potentially coming to Melbourne.

She stated that the company has indicated that 10 of the 500 jobs will come from existing personnel so the total number of additional employees would be 490.

Ted Telford, KPMG, representing Washington Mutual, was present.

Mrs. Palmer asked if this is an expansion or relocation of a business. Mr. Telford replied it is an expansion. They have a need to acquire certain facilities in this part of the country and Melbourne is one of two sites being investigated.

Responding to Mr. Palmer, Mr. Telford stated that if the company chooses Melbourne, the choice would be the Wal-Mart facility. This would involve renovating the building with significant interior and exterior renovations.

Mrs. Walker questioned whether the company is asking Council to do this as a contingency since the decision not been made to locate in this area. Mr. Telford responded yes. He added that Florida is a good location that has been successful in the past, noting that Palm Beach County and Pensacola have great operations. This is a

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

good location for Washington Mutual. A final decision will not be made until all of the numbers are in and verified.

Mr. Contreras asked about the competition. Mr. Telford stated it is a city in Georgia. Mr. Contreras asked about a time frame should Council approve this ordinance. Mr. Telford said that hopefully a decision would be made within the next 30 days and Washington Mutual would be in business by the end of December.

Mayor Buckley asked about the manpower build up. Mr. Telford responded that they would hire 100 people to start operations, with a majority of employees hired in 2004. He estimated that the final 100 employees would be hired in 2005. He stated this is conservative; it could be sooner.

Responding to Mrs. Poole, Mr. Telford stated they would not add another story to the facility and adequate parking is available on the site. There will be no structural changes from a visual standpoint. He stated there would be significant work to the landscaping.

Mrs. Poole asked why Washington Mutual selected this spot. Mr. Telford advised that this is a good location and is the most cost effective site.

Moved by Walker/Contreras for approval of Ordinance No. 2003-31.

Mr. Contreras asked if the business would operate 8:00 a.m. to 5:00 p.m. or on a shift rotation. Mr. Telford advised that both scenarios are being considered. The assumption, based on other facilities, is strictly an 8:00 a.m. to 5:00 p.m. operation. The facility would be a small call center designed to provide support to other Washington Mutual offices.

Responding to Mrs. Palmer, Mr. Telford stated that Washington Mutual has been in business for at least 20 years.

Mrs. Poole asked if Washington Mutual is in the habit of getting tax abatements on properties. Mr. Telford responded they look for opportunities that will improve the overall cost structure such as tax abatement, assistance with training, etc.

The question was called. Motion carried. (Mrs. Poole stated she voted nay based on other companies starting their business in Melbourne without assistance.)

16. COUNCIL ACTION RE: Renegotiation of the Stormwater Utility Interlocal Agreement with Brevard County Board of County Commissioners that expires September 30, 2003.

Mr. Ralls reviewed the Agenda Report: The Stormwater Utility Interlocal Agreement with Brevard County provides for the County to administer and manage the City's stormwater utility program. The Agreement remains in effect until September 30, 2003. County staff was instrumental in establishing the City's stormwater utility by coordinating the involvement of the Property Appraiser, Tax Collector, and Information System offices. Calculation, billing, and collection of fees have operated well for over three years;

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

however, some other responsibilities are already or could be performed by City staff, such as implementing capital projects and preparing grant applications.

There is a duplication of effort by County and City staff in these administrative functions because City staff does not believe it is appropriate to delegate responsibility for management of the projects. The City Engineer and Utilities Director recommend re-negotiating the existing administrative service contract to eliminate duplication of effort but retain the provision for the County to calculate the stormwater utility fees. The savings realized by negotiating a reduced level of service with the County can be used to fund additional staff which will be required to comply with National Pollutant Discharge Elimination System (NPDES) permit mandates.

Other separate agreements with the County Property Appraiser and County Tax Collector for use of tax records and billing and collecting the stormwater utility fee would not change.

Responding to Mayor Buckley, Mr. Ralls stated staff hopes to reduce the payment to the County from \$110,000 to \$30,000.

Mr. Palmer commented that the savings could assist the City in hiring staff to handle the National Pollution Discharge Elimination System (NPDES) permits. Mr. Ralls responded he does not know what the County will want for the calculation of fees, so at this time it is unclear what the savings will be.

Mr. Schluckebier confirmed that the City will be required to take on additional requirements for NPDES permitting which will require additional staff this year. What staff proposes is to negotiate decreasing the amount paid to the County from \$110,000 to something that more closely corresponds to the benefits we are receiving. He believes that number will be substantially lower.

Mr. Palmer asked if the County could reject the proposal. Mr. Ralls stated the City is asking the County to do something that the City similarly did with in our agreement to calculate their sewer bills. They may or may not go along with it. He said we may find that their people would rather continue to run the show. Mr. Palmer agreed it is worth the effort to negotiate. Mr. Ralls stated that anything negotiated would be brought back to Council.

Mrs. Poole stated she has some concerns. She asked about staff to be hired, salaries, benefits, etc. She stated that the County had six employees that did nothing but this type of work. Mr. Ralls responded the City would need an engineer and a technical/clerical person.

Discussion followed regarding the services provided by the County. Mr. Ralls advised that the County's service does not include inspection of the stormwater projects to ensure they are working and kept clean. Mr. Ralls informed Council that whether the agreement with the County is renegotiated, the City cannot take on the NPDES permit issue without

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

hiring additional staff. He stated he believes the City can do the NPDES permits and the administrative function for the stormwater utility program with the same people.

Mr. Schluckebier confirmed that taking the administrative function of the stormwater utility program would not require additional staff.

Moved by E. Palmer/Hand to authorize staff to negotiate a new interlocal agreement with Brevard County for a reduced level of services for Stormwater Utility Administration. Motion carried unanimously.

17. COUNCIL ACTION RE: Approval of contract for purchase of 3.06 acres of property for \$203,900 from the Babcock Street Community Redevelopment Agency.

Mrs. Dittmer briefed Council. This is a simple transfer from the Babcock Street Community Redevelopment Agency to the City. It is approval of a Contract for Purchase and Sale for the portion of the former Palms Theater property that will be utilized as City right-of-way and retention for the North Babcock Street realignment. She stated that it also authorizes the City Manager to receive the deed and execute any closing statements related to the transaction.

Mrs. Dittmer advised that on May 28, 2002, Council approved a budget of \$203,900 to allow for the purchase of over three acres. The project is under final design and a survey has been completed to divide the property. The project will go to bid in approximately one month and staff is hopeful that construction will begin by September.

Moved by Contreras/E. Palmer to approve the purchase of 3.06 acres of property in the amount of \$203,900. Motion carried unanimously.

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

18. a. COUNCIL ACTION RE: Approval of contract to sell 3.06 acres of property for \$203,900 to the City of Melbourne.
- b. RESOLUTION NO. 2003-01: A resolution of the Babcock Street Community Redevelopment Agency conveying 3.06 acres of property from the Babcock Street CRA to the City of Melbourne.

From the Agenda Report: This item authorizes the Babcock CRA Chairman to execute the closing statement and deed. Once the sale is complete, staff will use the proceeds of \$203,900 for partial repayment on the \$800,000 note payable to Sun Trust Bank.

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

Mrs. Poole asked if this is the same property that Council loaned money to the CRA to purchase. Mr. Gougelman responded yes, it is a portion of that property.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

Mr. Palmer asked if an appraisal was done on the property. Mrs. Dittmer stated that an appraisal was done in 2001 before the CRA purchased the property. Staff took the per acreage cost and divided out the acreage needed for the roadway project.

In response to Mrs. Walker, Mrs. Elliott reported that the interest rate on the loan for the purchase of the property is a very low rate.

Moved by Walker/Contreras for the Babcock Street Community Redevelopment Agency to approve the sale of 3.06 acres of property in the amount of \$203,900 and adopt Resolution No. 2003-01 conveying 3.06 acres of property from the Babcock CRA to the City of Melbourne. Motion carried unanimously.

Council reconvened for the remaining agenda items.

19. COUNCIL ACTION RE: Travel approval for Florida League of Cities Conference, August 14-16 in Lake Buena Vista, FL.

Mayor Buckley, Vice Mayor Contreras, and Council Members E. Palmer, Poole, C. Palmer and Hand expressed a desire to attend. There was discussion regarding Council's training and education budget.

Mr. Contreras asked if other departments have the same latitude as Council to increase their training and education budget. Mr. Schluckebier responded that they do subject to the department's entire budget. He added that, having said that, Council does make adjustments for departments where warranted for unusual circumstances. Those kinds of situations are listed in the first and second quarter budget reviews.

Mr. Contreras stated that Council should lead by example. He stated Council stressed to the departments that there would be an across the board reduction in training and education. Council knew this situation would come back to them. Now we want to find the money to increase our training and education budget. He totally disagrees with that.

Mrs. Poole stated there are Council Members who serve on standing committees all year long and these members must attend the conference. She added that it is wrong for anyone to attend just for the fun of going. She added that any Council Member that goes should attend all of the meetings and bring back some type of report.

Mr. Palmer stated that these conferences should be looked at as educational tools for Council. Whether a Council Member is a committee member or not is immaterial. If a Council Member wants to attend and there is no adverse impact on the overall budget, Council should approve travel for anyone that wants to attend.

Mr. Schluckebier said the money can be found. He added that the budget action Council took had consequences. There are some departments having difficulties because employees have required training they must attend.

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

Mayor Buckley stated the FLC conference is a good learning tool for Council. Mr. Schluckebier recommended allowing everyone to attend that can go.

Mr. Contreras stated that he would lead by example and yield not to go.

Moved by E. Palmer/Hand for approval of five to attend. Motion carried. (Vice Mayor Contreras and Council Members Walker and C. Palmer voted nay.)

Mrs. Palmer stated that it is unfair for one Council Member to utilize all of the training and education funds.

Mrs. Poole responded that Mrs. Palmer does not understand the situations. Mrs. Poole advised that she only attends those things that she is required to attend. She encouraged Mrs. Palmer to join committees.

Mrs. Walker stated she would like reports on what is attended and accomplished.

Moved by Walker/Contreras that reports be submitted on what is attended and accomplished. Motion carried unanimously.

20. COUNCIL ACTION RE: Board Appointments

- a. Building and Construction Advisory Committee - two regular members

Moved by E. Palmer/Contreras to reappoint John Black and Tom Luce. Motion carried unanimously.

- b. General Employees' Pension Plan Board of Trustees - one regular member

Moved by Poole/Hand to appoint Tina Casey as the fifth member. Motion carried unanimously.

- c. Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee - four regular members and one alternate member

Mrs. Palmer stated that sometimes change is good, we need new ideas. She pointed out that Mr. Hester has been absent nine of 37 meetings.

Mayor Buckley stated he would take reappointment one seat at a time

Moved by E. Palemr/Hand to reappoint George Alexander. Motion carried unanimously.

Moved by Hand/Contreras to reappoint Gene Davis. Motion carried unanimously.

Mrs. Walker nominated Bobby Bechtel and Mrs. Palmer nominated Mr. Echerd.

Moved by E. Palmer/Poole to close the nominations. Motion carried unanimously. The roll

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

call vote was:

Bechtel: E. Palmer, Poole, Walker, Hand, and Buckley

Echerd: C. Palmer and Contreras

Appointed Bobby Bechtel.

Moved by E. Palmer/C. Palmer to reappoint Link Johnsten. Motrion carried unanimously.

Mayor Buckley asked Council about the alternate seat.

Mrs. Palmer nominated Mr. Echerd.

Moved by Walker/Contreras to close nominations. Motion carried unanimously.

Moved by Walker/Poole to appoint Mr. Echerd. Motion carried unanimously.

21. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Palmer asked for the tentative date to finish the Babcock Street realignment project. Mrs. Braz stated that staff is hopeful that construction will start in September and she does not know how long construction will take.

There was a brief discussion regarding the Palms Theater property. Mrs. Braz said there has been some interest to develop multi-family; however, based on Council's feedback staff has declined any such proposal. She stated there is the possibility of multi-use, such as office condominiums/residential condominiums. Any actual offer will be brought to Council.

Mrs. Palmer reported that the traffic light at Fountainhead Boulevard and Wickham Road is not working properly. Mr. Schluckebier advised that staff would investigate.

Mrs. Palmer suggested that Council Members serving on Florida League of Cities standing committees recommend that these meetings be held in locations that are less expensive.

Mr. Palmer discussed the grant opportunities included in the City Manager Report. He suggested that the City apply for the Community Oriented Police services grant. Additionally, the Florida State Cultural Affairs has almost \$14 million in grant funds available for such things as acquisition of cultural facilities. The City should apply for the grant for the construction of a band shell at the Melbourne Military Memorial Park. Council concurred with Mr. Palmer's recommendation to seek these two grants.

Mrs. Poole discussed the Melbourne Military Memorial Park dedication/celebration. She stated it was a wonderful project. There was a brief discussion about providing Bill Barnett with some type of recognition for his efforts with the project.

Mr. Schluckebier stated that despite staff's best efforts, the Ferrari has not sold. We are in

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
MAY 27, 2003

the position of making the car available to dealerships on consignment and may again place it on eBay with a lower reserve. He will keep Council apprised.

Mr. Schluckebier stated that during the process of advertising/interviewing for department head level positions, we are finding that the most competitive people that we want to hire are currently making more money than the City is offering. This places the applicant and the City in a unique position. He asked Council for discretion in offering annual leave; he would like to be able to offer the mid-range level for annual leave.

Moved by Poole/E. Palmer to allow the City Manager the flexibility to bring in senior management employees at the mid-range level for annual leave. Motion carried unanimously.

22. ADJOURNMENT

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

The meeting adjourned at 10:46 p.m.



Assistant City Clerk – 6/5/2003

Approved by Council 6/10/2003