

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JULY 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. Reverend Darice K. W. Dawson, FIT Chaplain, All Faith Center, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

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

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley read and presented the following:

“Melbourne Firefighters Appreciation Week”, August 25 through 31, 2003; accepted by Lieutenant Frank Avilla, Melbourne Fire Department.

“Greater Melbourne Police Athletic League Boys 14 and Under Basketball Team” – recognition for the team’s National Championship; accepted by Police Chief Don Carey, Officer Colleen Harrington and members of the team.

“April 2003 House of Worship Beautification Award – Holy Trinity Episcopal Church”; accepted by Jim Cole and Al Los.

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

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

6. CITY MANAGER’S REPORT

No additions/no comments.

7. PUBLIC COMMENTS

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None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2003-43 (CAUSEWAY CENTER): (Second Reading/Public Hearing) An ordinance amending Ordinance No. 2002-63, relating to the conditional use previously granted for the Causeway Center, by adopting a revised site plan and providing for a new stipulation; property located on nine platted lots and portions of two lots consisting of approximately 2.16 acres on the north side of New Haven Avenue, south of Strawbridge Avenue, and east of U.S. 1 (Harbor City Boulevard). (Owner/Applicant - Hynes Properties, LLC) (Representative - Dave Menzel) (First Reading - 7/08/03)
- a. Ordinance No. 2003-43: An ordinance amending Ordinance No. 2002-63.
- b. Resolution No. 1833: A resolution adopting a revised easement and license agreement.

Attorney Gougelman read Ordinance No. 2003-43 and Resolution No. 1833 by title.

Attorney Gougelman reported that at the last meeting, questions were raised about the property containing an Indian burial mound and/or archaeological relics. There was debate about whether the initial review of the site had been done consistent with state procedures. Mr. Gougelman said that he called the State of Florida Division of Historical Resources (Division); a memorandum has been distributed to Mayor and Council outlining that conversation.

Continuing, he said that two Council Members, independent of one another, visited him and asked follow-up questions about legal authority with regard to this issue. He noted that he was asked to prepare draft conditions of approval with regard to the unmarked Indian burial area and the archaeological site. Mr. Gougelman distributed a page to Council and the applicant outlining the following two conditions:

1) If during the progress of this project, any unmarked human remains are encountered at any time within the project site area, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes. The owner/developer shall contact the Florida Department of State, Florida Division of Historical Resources, Compliance and Review Section at (850) 245-6333 or (800) 847-7278. Project activities shall not resume without written authorization from the Division of Historical Resources.

2) Prior to site excavation, preparation, grading, or demolition, for development as defined in Section 380.04, Florida Statutes, the owner/developer shall undertake and complete Phase II archaeological test excavation and, if warranted according to the Florida Division of Historical Resources, Phase III mitigation, all as described in Cultural Resource Management Standards and Operational Manual, prepared for the Florida Division of Historical Resources by Archaeological Consultants, Inc. of Sarasota, Florida,

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and Janus Research of St. Petersburg, Florida, and dated February 2003, and consistent with Chapter 1A-46, Florida Administrative Code.

Attorney Gougelman said that he is not making a recommendation with regard to these conditions. He added that he was simply asked to be prepared. He explained that the first condition relates to the Florida Statutes and is intended to deal with unmarked human remains at a development site. The second condition involves site excavation. The Division indicated that it was recommending consideration be given to Phase II/III archaeological excavation. The state has limited authority over a site, which is suspected to contain archaeological remains. To the extent that the state can gain authority, it believes a three-step process should be followed to determine whether there are archaeological relics that should be preserved.

Attorney Gougelman said that in the event Council moves for approval of the ordinance, the conditions are available for consideration.

Continuing, Attorney Gougelman informed Council that Attorney Gary Frese, who represents the applicant, submitted a letter prior to the meeting. (In the letter, Mr. Frese outlines the following: concern about attempts to prohibit or inhibit progress of project based on archaeological or historical reasons; no portion of property designated as a state archaeological landmark; the Division has made only recommendations because the state has no authority over this site; Hynes will comply with Section 872.05, Florida Statutes; the City has no authority to impose any restrictions on the site plan relating to archaeological or historical items; there is no City Code that would allow restrictions for archaeological or historic reasons; and any restriction limiting development of the property based on historical or archaeological reasons is a violation of Florida Statutes.)

With regard to the First Amendment to the Easement and License Agreement, Attorney Gougelman said several changes have been requested. The construction period will take longer than originally expected; therefore, the applicant has requested some of the milestones for completion of the project be rolled back. Mr. Gougelman read the date changes as agreed upon by staff. Changes include revising the surveyed relocation of the trysting steps/bluff walk from 2003 to 2004; completion of construction from 2005 to 2006; amending the legal description in the grant of easement; and placement of commemorative plaque from 2004 to 2006. The date changes would also require a change in the (original) Easement and License Agreement, which would have to be included in the First Amendment document.

Mrs. Palmer asked if the two new conditions would apply to the second Hynes site plan. Attorney Gougelman said no because they were not included at the time of approval.

Mr. McCord briefly summarized the item. Mayor Buckley called for disclosures.

Vice Mayor Contreras said that on July 10 he received a message at home from a caller who did not identify herself. The caller ID indicated the name "Passamonte." The caller referenced a 1940 archaeological dig where a human skull was found. Further she said that she is American Indian and offended that he (Mr. Contreras) voted for this

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development. On July 14, he spoke with Jerre Divelbiss who said that to his knowledge human remains have not been discovered on the site. On July 15 he had a similar conversation with Jackie Westphal. On July 21 he spoke with Rita Divelbiss. They met and she provided him with information on the Cherokee clans. And, on July 21 Dorothy Gaunce left a message for him indicating that she is in favor of the Causeway Center.

Mr. Palmer said he received a message from Ms. Gaunce who is in favor of the project.

Mrs. Poole said that she received a call from Dorothy Gaunce, a patient of Dr. Hynes, who supports the development. She spoke with Chief Silver Eagle about his concern for the midden and artifacts. She spoke with Stan Field who is concerned about the artifacts and said there are probably human bones on the site. Mr. Field indicated that he spoke with the State Historic Preservation Officer who is very upset that the state's recommendations have not been met. Mrs. Poole said she spoke with Alyssa Slade who is the Historic Preservation research person in Dr. Matthews' office. Ms. Slade indicated to Mrs. Poole that she (Mrs. Poole) is on the distribution list because she previously called the state office to find out if the state had any records on the trysting steps. After that call, Mrs. Poole was placed on a list and she started to receive copies of letters regarding the Causeway Center.

Mrs. Poole said she spoke to W. S. Steele, the Deputy Tribal Historic Preservation Officer, Seminole Tribe of Florida. He faxed a letter (distributed to Council) indicating that his office concurs with the findings of the Division of Historical Resources in that an additional phase of archaeological fieldwork should be conducted on the site. Additionally, she received a call from Connie Vadnal who asked that the site not be desecrated and that proper archaeological procedures be followed.

Mrs. Walker said that Mrs. Gaunce left her a message stating that she is in support of the project.

Mrs. Palmer said she received a call from Mrs. Gaunce who is in favor of the development. And, she received two telephone calls from a woman who did not identify herself and left screaming, threatening messages on the answering machine.

Mrs. Hand said she also received a telephone call from a woman who did not identify herself and was screaming; totally opposed to the project. She also received a call from Mrs. Gaunce, who is in favor of the project.

Mayor Buckley stated that he received a call from Mrs. Gaunce who recommended approval of the project.

Dave Menzel, MAI Architects, representing the applicant, addressed the timing of the project and the archaeological issue. He explained that development of a condominium requires extensive legal work up front along with pre-sales. That is the reason for requesting the time extension.

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Mayor Buckley asked if the dates read by Attorney Gougelman are acceptable to the applicant. Mr. Menzel said they would like another year (2007).

Mrs. Poole said she received a call today from Diane Barile, Florida Tech, who is concerned about the drainage on the site, especially since water will be stored below the building.

Mr. Menzel said that water will not drain directly to the Indian River Lagoon. It will be a normal retention pond. He explained the process and said that water will go into a holding tank, percolate through the sand and then during a storm surge, outfall to the east. He added that the St. Johns River Water Management District has approved the plan and issued the permit.

Mrs. Poole asked if the applicant is planning to conduct Phase II/III archaeological excavations as recommended by the state. Mr. Menzel said that the state agency is a recommendation agency – it does not have control of the site. Since the site is so heavily built up, there has to be a certain amount of excavation. They plan to excavate the site and monitor the activities with an archaeological consultant.

Mrs. Poole said that the state does not want any excavations started until the survey is complete with archaeologists and technicians. She added that the state is very concerned because it has not received a complete Phase I answer.

Mr. Menzel repeated that the state is a recommendation agency; representatives from the state did not visit the site. He noted that Tom Funk is an archaeologist that was qualified by the state. He did the initial report and his recommendation is to excavate and have someone on site to monitor the activities. He added that they cannot hand excavate an asphalt parking lot.

Mrs. Poole said that over 800 artifacts have been found on the site but not catalogued. Mr. Menzel replied that the report has not yet been finalized.

Mrs. Walker asked when the traffic light will be considered. Mr. Menzel explained the process through DOT, which includes certain warrants. He noted that they won't be able to do the warrant study until the construction is complete and the building is occupied.

Gary Frese, attorney representing the applicant, said that Dr. Hynes asked him to address the archaeological issue. He stated that the site is not pristine; it has been almost completely developed for years. There are certain thresholds for the land to be protected. The Division of Historical Resources has never used the term "designated historical landmark" for this property. The Division has authority over lands that contain a landmark. And, if there is a landmark, the owner has to agree. Attorney Frese stressed that there are no landmarks on this property. The correspondence from Dr. Matthews, State Historic Preservation Officer, lists recommendations. It is very clear that if the Division had the power, it would have made more than "recommendations."

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Continuing, Mr. Frese said Dr. Matthews' report says there is "no evidence of human remains." Continuing, he noted that they completely understand the law on unmarked human remains. They would have to stop activities, report the finding to the coroner and follow the State Statutes.

Mr. Frese said that the SJRWMD has issued the stormwater permit, which allows the movement of dirt. The St. Johns permit does not have any archaeological or historical conditions. Additionally, placing a restriction on this development using criteria that is not in the City Code will present problems. He concluded by saying they intend to have an archaeologist on site and if they find human remains, they will report it.

A brief discussion followed.

In response to Mrs. Poole, Dr. Hynes said that Mrs. Poole presented herself as a citizen at the Planning and Zoning Board meeting. He added that what was remarkable about her attendance was that Mrs. Poole represented Mr. Brown who is suing the City of Melbourne. Dr. Hynes questioned the quasi-judicial process. A brief discussion followed.

Dr. Hynes asked Mrs. Poole if she has a shred of evidence to back her statement that Indian bones are buried on the site. He said that two archaeological evaluations and 72 holes in the site haven't produced one bone.

Mrs. Poole said she has never said that Indian bones are buried on the site. She has said that bones have been discovered on the site. A book, a study and surveys all talk about a skull that was found. She added that she did not attend the Planning and Zoning Board meeting in order to represent Mr. Brown, rather, Mr. Brown asked her to. Additionally, she said she did not know that he was suing the City of Melbourne.

Mrs. Palmer called a point of order based on the personal argument between Council Member Poole and Dr. Hynes.

In response to Vice Mayor Contreras, Attorney Gougelman explained the quasi-judicial process.

Mrs. Palmer asked Dr. Hynes if he is in agreement with the two stipulations read by Attorney Gougelman. Dr. Hynes said he agrees with the first condition; it is a reasonable recommendation. Regarding the second condition, he feels they have already satisfied that condition. They have already investigated the site and no bones were identified.

Continuing, Dr. Hynes said that the state told him that Mrs. Poole contacted the state directly and raised the issue about a skull found in 1940. He noted that he hired two archaeologists at a cost of \$25,000 to dig up nothing. He stated that there are no Indian bones on the site. He added that it is not fair to impose another \$50,000 cost on him to dig through concrete on a developed site.

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A brief discussion followed. Mrs. Palmer asked the difference between the excavation that has already been done on the site and the excavation being recommended by the state.

Dr. Hynes noted that artifacts – chips and pieces of pottery – were found. And, it is not that the artifacts aren't important, rather they don't bring value to understanding the Malabar period and the AIS Indians. He said they have done due diligence. There have been two digs, which revealed no bones.

Mrs. Palmer asked if the state would send an archaeologist if the state's recommendations are followed. Attorney Gougelman said the state is looking for Hynes to pay the bill and hire an archaeologist to perform the test excavations consistent with the standards and operational manual.

Mrs. Palmer said the requirements are written (in the operational manual); therefore, someone needs to determine if Hynes' excavations have fulfilled that requirement.

Recessed: 9:03 p.m.
Reconvened: 9:15 p.m.

James Newcomb, Reverend, 2544 Burns Avenue, stated that he is Silver Eagle of the Southern Band of Cherokees and Chief of the Eagle Clan in Melbourne. He said that the Statutes need to be enforced and time needs to be given to allow a proper dig and inspection of the area. This site involves non-replaceable history. Regarding the law, he noted that Section 872.05, Florida Statutes, applies to human burials and associated burial artifacts discovered or believed to exist. Archaeological and historical evidence has been presented. It has been reported that over 800 artifacts have been found and it was reported in 1940 that a skull was found. He added that the artifacts have to be returned.

Discussion followed between Reverend Newcomb and Vice Mayor Contreras regarding the standing of the Southern Band of Cherokees within the Seven Clans of the Cherokee society.

Stanley Field, 108 E. Melbourne Avenue, said he is White Horse of the Southern Band of Cherokees. He noted that in 1884 the property was identified as a large Indian village. He noted that the 1990 law (Native American Graves Protection and Repatriation Act - NAGPRA) prohibits the desecration of this site. The State Statutes also provide for this. Mr. Field said that Mr. Funk did a good job; however, he hasn't finished it. Mr. Funk has artifacts and no one knows where they are. He recommended that the artifacts be turned over to the City so they can be forwarded to the state.

Mr. Contreras asked Mr. Field if he believes the project will stop if unmarked human remains are discovered. Mr. Field said there has been so much change in the site that he doesn't believe the discovery of human remains will stop the project.

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Mrs. Palmer said she is puzzled that a report from 1940 indicates that a skull was found; however, no one did anything about it. She asked Mr. Field if he has knowledge or evidence about human remains found on the property. Mr. Field said the Rouse report indicates human remains and there have been local reports by people hanging around the site about human remains being taken in recent excavations.

A brief discussion followed.

Sheridan Murphy, St. Petersburg, Florida, American Indian Movement, said that in 1940 a human skull was found on the property. He stated that he believes there needs to be a proper archaeological excavation of the property. Additionally, he would like a copy of Funk's report.

Mr. Murphy said that the American Indian Movement prefers a dialogue of cooperation. His hope is that Dr. Hynes will respect human remains. It is possible a cemetery is there and it would be tragic for the Hynes development to impact dozens of burials. Expenses will go up as a result of lawsuits should he run into human remains or associated funeral objects.

Bobby C. Billie, Independent Seminole Nation of Florida, representing indigenous people, stated that day after day indigenous people struggle to protect their ancestors' burial grounds. The American structure leads to the destruction of nature and the environment for money. Mr. Billie stated that he is here to stop the desecration of his ancestors. He noted that he visited the site today and there are burials. He concluded by saying it wouldn't hurt to stop the project and it would save future generations.

Mrs. Poole asked Bobby Billie if he would like to see the archaeological survey completed before any type of excavation is started. Mr. Billie replied yes and added that he does not trust archaeologists. He suggested that some of his people be present to see what has been removed.

Mrs. Poole said the developer wants to conduct the survey during construction. The Division has recommended that the survey be completed before construction/excavation begins. Mr. Contreras asked if the recommendation from the state is legally binding on the developer. Attorney Gougelman said a recommendation is not binding on a developer; however, excavation/construction could not continue if they find human burial remains.

Shannon Larsen, Live Oak, Florida, said she hopes the retention pond has been adequately reviewed and meets all discharge requirements. Regarding the previous comment made about the site not being pristine, she said that is an attempt to make this issue seem less important. The applicant is saying that the site is already disturbed, so it's okay if it is destroyed even more. She noted that Site 8BR39 (archaeological site – Crane Creek North) is a place where people came many years ago to lay their loved ones and belongings to rest. And, she noted that Bobby Billie is a relative of those people.

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Ms. Larsen stated that archaeologists hired by developers are seldom honest because they are being paid by the developer to reach a conclusion that will allow the developer to go forward with the project. Also, the developer has said that the Division of Historical Resources and St. Johns don't have the authority. She stressed that the City of Melbourne has the authority to protect this burial site.

Mrs. Walker asked Ms. Larsen who she is representing. Ms. Larsen said she is representing "Ancient Trees", an organization for the preservation of ancient indigenous sites and water quality in the State of Florida.

Mrs. Palmer asked who should pay for the archaeologist if the developer does not pay. Ms. Larsen replied that the state has representatives that they recommend. Mrs. Palmer said that burial sites are sacred and should be preserved; however, she is still trying to decide if this is a burial site. Ms. Larsen said remains have already been removed; therefore, it has already been determined that this is a sacred area that needs to be protected. She added that she was horrified at the way the testing was done. Bones crush easily and if testing is not done with great sensitivity, they won't be found.

Mr. Contreras asked Ms. Larsen if she has the expertise and credentials to make the statement that this is an ancient burial ground. Ms. Larsen replied yes. She added that she does not have the credentials Mr. Contreras is seeking – she is not an archaeologist or an anthropologist. However, she has been working with Bobby Billie for over 12 years, has attended numerous NAGPRA meetings and meetings with sacred leaders.

A brief discussion followed. Mr. Contreras asked Ms. Larsen if she has any objective evidence that there are human remains on the site. Ms. Larsen said she has information that skulls, bones and artifacts have been found. In response to Mr. Contreras, she submitted her information for the record.

Ruby Beaulieu, Pasco County, American Indian Movement, said steps should be taken to protect this site. She urged Council to deny the request. She agreed with the comment made about archaeologists that work for developers and said she has had experience with that in Paso County. She added that there needs to be a more balanced system.

Dennis Simpson, 156 St. George Road, West Melbourne, representing American Indians, said that everyone is saying this is a burial ground. And, if artifacts are on the site, then the developer can't begin digging.

Janet B. Tucker, Bell, Florida, stated that she is an applied cultural anthropologist who works with the American Indian Movement. She said that the state report indicates that a skull and bones were found on the site. The report by Rouse says human remains were found on the site. In 1884 the site contained a 20' high mound 200 diameters in width. She added that she does not believe the archaeologists who have been hired have done their work. With the advent of "archaeologist for hire" there is a problem in the field with archaeologists being paid by developers.

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Ms. Tucker said it is a fact that this is a burial site. Melbourne was built on a large village. She submitted information relating to Florida Archaeological Survey, Site No. 8BR39.

Mr. Frese stated that they are going to comply with the law; therefore, it does not need to be restated in the ordinance. He added that not one person has said that there are human remains on the site. People have heard and read about them. If there were human remains on the site, he is sure the state would have already stopped the development. The state would not have sent recommendation letters. He concluded by saying they do not want to agree to be held up by an agency that doesn't have the authority, unless it decides to designate the site as an historic landmark.

Mr. Contreras asked Mr. Frese his thoughts on having Mr. Billie or another representative from the Seminole Tribe on site during construction. Mr. Frese said he would have to consult with Dr. Hynes. They intend to have a professional architect on site.

Mr. Contreras asked when the final Funk report will be promulgated. Mr. Frese said he is not sure because the May 24 letter (from the Division of Historical Resources) finds the report complete and sufficient.

Mrs. Poole said that although Thomas Funk has a license, he is not on the state's list. Mr. Menzel replied that he sent Mr. Funk's resume to the state and the St. Johns River Water Management District. Mr. Funk's resume was reviewed and approved by the various agencies.

A brief discussion followed regarding Mr. Frese's concern with the last sentence of the first condition ("Project activities shall not resume without written authorization from the Division of Historical Resources.") His concern is that the state archaeologist is called in when remains are older than 75 years. If the remains are not 75 years, the medical examiner would have authority. Mr. Frese noted that the wording of the condition automatically assumes that the bones are over 75 years. They don't want to stop the entire project because remains are found on a one square foot or 1,000 square foot area of the property.

Attorney Gougelman read Section 872.05 (5) (b), Florida Statutes. He said it is not completely clear what would happen and whether any further activity would cease on the property.

Mrs. Poole referenced letters dated May 28 and June 10, 2003 from the Division of Historical Resources.

Excerpts from the June 10 letter: Phase II/III excavations on the Causeway Center property will require the preparation of a detailed data recovery plan for the site. The plan must outline research objectives and a plan for excavation, including methods for excavation and artifact analysis. The data recovery plan must be approved by (the state) prior to excavations. When the recovery plan is approved by (the state), archaeological excavations may proceed. It is imperative that the archaeological consultant has the

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necessary number of experienced field technicians. (The state is) still lacking the collected artifact list from the Phase I investigations conducted by Mr. Funk.

Excerpt from the May 28 letter: Though past development has taken place within the project area, survey results indicate that prehistoric components of Site 8BR39 remain intact and have the potential to yield archaeological information about the Malabar II period and the prehistoric residents of Melbourne, Florida.

Continuing, Mrs. Poole referenced the federal and state laws, which protect these types of sites. She noted that artifacts have been discovered and are believed to exist on the property.

Mrs. Poole referenced an archaeological report prepared by Rouse in 1951, which indicates a skull, bones and evidence that this site may have been an Indian mound. She stressed that Council cannot allow the passage of this ordinance with the information that has been presented without a recovery plan.

Moved by Poole/E. Palmer that if we wish to pass the third plan tonight that we have the stipulations to go with it that we will see the archaeological survey completed in the manner the Department of State requested so we will not knowingly destroy something that we have been made aware of. Further, that the data survey be performed in the proper manner and that no excavation start until the state says (the applicant) may begin.

Mrs. Palmer referenced the letter submitted by Attorney Frese at the beginning of the meeting. She said that the last two paragraphs are germane. Attorney Gougelman noted that Attorney Frese is stating that if his clients are limited based on historical or archaeological reasons, that would result in a statutory taking of the property. Attorney Frese's second point is that these restrictions are not supported by the City Code.

Attorney Gougelman explained that Appendix B, City Code, contains the provisions relative to site planning. There is nothing within the standards relating to historical or archaeological circumstances. And, the law in Florida is that if the plan meets the requirements, then the site plan must be granted.

Responding to Mr. Palmer, Attorney Gougelman said that with regard to Section 872 of the State Statutes, the City Council would not be an accessory to a felony if human remains are found on the site.

Following a brief discussion, Attorney Gougelman said that the last sentence of the first condition could be amended to read "Project activities shall resume upon satisfaction of Section 872.05, Florida Statutes, and other applicable federal and state laws." Regarding the second condition, the applicant has indicated that the City does not have the authority to impose this and, if imposed, would result in a statutory taking.

Mrs. Walker asked if Council, sitting as judges, could make the determination to rule on the evidence at a later time. Attorney Gougelman said Council could close the public

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hearing and postpone action. Mrs. Walker said she would like to be able to evaluate all of the information she has received at this meeting.

In response to the Mayor, Attorney Gougelman read the change in the last sentence to the first condition. Mrs. Poole said she does not think it would be too much to add the second condition. It would allow a Phase II/III study to occur rather than destroying the property with bulldozers.

Mrs. Hand said that Council does not have proof that this is a burial site. Regarding Dr. Hynes, she stated that he is a professional, honest physician. It is an injustice to him to say that he influenced the archaeologist's report. Dr. Hynes has bent over backwards to do everything the City has asked him to do and he wouldn't do anything to jeopardize his practice. She added that it is time Council made a decision on this item.

Mayor Buckley recommended that the first condition, as revised, be added to Section 2.b. of the ordinance.

Mrs. Palmer said it is important for the audience to realize that if this site plan is not approved, which contains additional stipulations, Hynes has approval to build according to the second site plan. The third plan is an improvement and Dr. Hynes has agreed to have an archaeologist watch the excavation.

At Council's request, Mrs. Wysor read Mrs. Poole's motion.

Mr. Palmer said that he voted for the first site plan because the medical center had merit. He didn't support the second plan because it had mushroomed into a mammoth giant. The third rendition is more acceptable; however, at this point Council doesn't know if this is a burial site or not. Therefore, he said that Council had better be assured that it knows what it is voting on. If this plan is approved, stipulations should be in place to ensure that the burial site is protected.

The roll call vote began; however, there was confusion on the motion. Mr. Palmer asked what the options are. Attorney Gougelman said Council needs to vote yes or no on the motion. The motion by Mrs. Poole is to attach both conditions. Although it is not clear in her wording, that is essentially the thrust of her motion. Mrs. Wysor read the motion on the floor. Mrs. Palmer said that she cannot support the second condition because Attorney Gougelman has indicated that the City does not have the authority to enforce this.

The question was called. The roll call vote was:

Aye: E. Palmer, Poole and Walker

Nay: C. Palmer, *Hand, Contreras and Buckley

Motion failed.

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*Mrs. Hand initially voted aye; however, she changed her vote to nay because she thought the motion contained the first condition, not both conditions.

Moved by Buckley/Hand for approval of the revised site plan for the Causeway Center on the Indian River, approval of Ordinance No. 2003-43, revising stipulation “b” in Ordinance No. 2002-63, adding a new stipulation regarding a traffic signal at Front Street and New Haven Avenue, and adding the first condition (referenced by the City Attorney) to Section 2.b. (as follows):

If during the progress of this project, any unmarked human remains are encountered at any time within the project site area, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes. The owner/developer shall contact the Florida Department of State, Florida Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278. Project activities shall resume upon satisfaction of Section 872.05, Florida Statutes, and other applicable federal and state laws.

The roll call vote was:

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

Nay: E. Palmer and Poole

Motion carried.

Moved by Walker/Hand for approval of Resolution No. 1833 with the changes outlined by Attorney Gougelman. The maker of the motion confirmed that the motion includes the dates referenced by the Attorney, with a construction completion date of 2006. Motion carried unanimously.

9. ORDINANCE NO. 2003-44 (CPA-2003-04), ORDINANCE NO. 2003-45 (Z-2003-955), AND ORDINANCE NO. 2003-46 (CU-2003-06), WITH SITE PLAN APPROVAL (SP-2003-15) INDIAN RIVER CONDOMINIUMS: (Second Readings/Public Hearings) Ordinances providing for a minor Comprehensive Plan Amendment (2.93± acres), rezoning (2.93± acres), a conditional use (4.73± acres) and site plan approval to develop a five-story, 61-unit multiple-family condominium project on property consisting of three parcels, comprising 4.73± acres, located on the east side of Harbor City Boulevard, south of Ballard Drive. (Owner - River Bluff III Corporation) (Representative/Applicant - David T. Menzel) (First Readings - 7/08/03)
- a. Ordinance No. 2003-44: An ordinance changing the land use from Commercial to mixed use Commercial/Medium Density Residential (CPA-2003-04).
 - b. Ordinance No. 2003-45: An ordinance changing the zoning from C-2 (General Commercial) to R-2 (One-, Two-, and Multiple-Family Dwelling Units) (Z-2003-955).
 - c. Ordinance No. 2003-46: An ordinance granting a conditional use to allow a building

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height greater than 40' with site plan approval (CU-2003-06/SP-2003-15).

Attorney Gougelman read each ordinance by title. Mrs. Poole said that the ordinance granting the conditional use (2003-46) does not indicate that the height will be limited to 49 feet. Mr. Gougelman said that the ordinance ties the height to a specific site plan. Mr. McCord confirmed that the site plan contains a note that the maximum height will be 49 feet. Attorney Gougelman added that it would be acceptable to amend Section 1 of the ordinance to indicate that the conditional use is being granted to allow a building height "not to exceed 49 feet."

Attorney Nohrr, representing the applicant, reported that a number of people in support of the item are prepared to speak. He added that he has no problem with amending the Ordinance No. 2003-46 as referenced.

Mayor Buckley asked if there was anyone in the audience who wished to speak in opposition to the item. There was no response.

Moved by Hand/Walker for approval of Ordinance No. 2003-44. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by C. Palmer/E. Palmer for approval of Ordinance No. 2003-45. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2003-46, as revised. The roll call vote was:

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

Nay: Poole

Motion carried.

Mrs. Poole said she voted nay because the building height (49 feet) is against the Code and she does not believe we should allow exceptions.

10. ORDINANCE NO. 2003-47 (CU-2003-05) WITH SITE PLAN APPROVAL (SP-2003-16)

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COMMUNITY CENTER: (Second Reading/Public Hearing) An ordinance granting a conditional use and site plan approval for a community center building in the R-2 (Cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) zoning district, located on a .61-acre lot on the south side of Masterson Street, west of Southland Street, in the Booker T. Washington Park Addition Subdivision. (Owner - Fern Turner) (Applicant - The Brevard Neighborhood Development Coalition) (First Reading - 7/08/03)

Attorney Gougelman read Ordinance No. 2003-47 by title. There were no public comments.

Moved by E. Palmer/Hand for approval of Ordinance No. 2003-47. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2003-48: (Second Reading/Public Hearing) An ordinance amending Section 2-201 of the Code of Ordinances by increasing the rates of subsistence meal allowance and mileage reimbursements. (First Reading - 7/08/03)

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

Moved by Walker/Poole for approval of Ordinance No. 2003-48. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2003-49: (Second Reading/Public Hearing) An ordinance amending Section 32-49 of the City Code by establishing Timberline Estates Water Main Reimbursement Area. (First Reading - 7/08/03)

The attorney read Ordinance No. 2003-49 by title. There were no public comments.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2003-49. The roll call vote was:

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

Nay: None

Motion carried unanimously.

13. ORDINANCE NO. 2003-50 (Z-2003-946) ELEMENT THREE: (First Reading/Public

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Hearing) An ordinance changing the zoning from C-R-A (Residential Holding with a conditional use for a motor cross track) (13.22 acres) and R-1A (Single-Family Residential) (5.5 acres) to R-2 (Cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) on an 18.72±-acre parcel to allow for the development of a townhouse project, located west of I-95, east of Jones Road, and north of White Heron Drive. (Owner/Applicant - Element Three, Inc.) (Representative - Kimberly Bonder Rezanka) (Postponed - 7/08/03)

The item was withdrawn by the applicant.

NEW BUSINESS

14. ORDINANCE NO. 2003-51 (A&V #259): (First Reading/Public Hearing) An ordinance to abandon and vacate an unimproved right-of-way known as Kragers Kourt between Melwood Drive and Riverview Drive. (Owners/Applicants – Barbara Eley, Miguel & Yvonne Morales, and Sam & Kendra Townsend)

Attorney Gougelman read Ordinance No. 2003-51 by title.

(The request from the applicants included the right-of-way from Riverview Drive to the Indian River Lagoon. Staff does not believe that section should be vacated and the ordinance has been prepared to reflect vacation of only the portion between Melwood Drive and Riverview Drive.)

City Engineer Howard Ralls referenced correspondence distributed from Miguel and Yvonne Morales and Kendra Townsend in support of vacating the portion between Melwood Drive and Riverview Drive.

Mayor Buckley opened the public hearing.

Charles Elder, 2708 Melwood Drive, asked if the river access will remain.

Mayor Buckley replied yes.

Yvonne Morales, 2600 Riverview Drive, said that the property is adjacent to her property on the north side. She referenced vandalism they have experienced on the property along with vagrants and said they would like to fence the property. She added that the next door neighbor, Barbara Eley, is in favor of this.

In response to the Mayor, Ms. Morales said she is aware that the ordinance does not contain the portion from Riverview Drive to the river.

Ray Barclay, 2510 South Riverview Drive, agreed with the request.

Dale Pierce, 2504 South Riverview Drive, spoke in support of the request.

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Steve Schnatz, 2614 Melwood Drive, said that the current property owners have obstructed the right-of-way by placing items at the property line. He stated that he is not in favor of this request. He recommended that each property owner be given 15', which would leave 10' for a walkway. He added that he would like for the City to put more investment in this area and improve the access with lighting. He pointed out that the west side of U. S. 1 has not received as much federal funding as the target area on the east side of U. S. 1.

Juane Wilcox, Bunnell, Florida said that this is a crime area and she would not want a thoroughfare next to her property.

Moved by Hand/Contreras for approval of Ordinance No. 2003-51. Motion carried unanimously.

15. ORDINANCE NO. 2003-52 (A&V #266): (First Reading/Public Hearing) An ordinance to abandon and vacate the west 10 feet of a 15-foot wide canal maintenance easement of Lot 43 in the Rio Lindo Subdivision. (Owner/Applicant - Donald & Angela Nelson)

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

Moved by E. Palmer/Contreras for approval of Ordinance No. 2003-52. Motion carried unanimously.

16. CONSENT AGENDA:

Moved by Hand/E. Palmer to approve the consent agenda, Items "a – i." Motion carried unanimously.

The consent agenda was approved as follows:

- a. Supplement No. 150 to the continuing consultant contract (Frazier Engineering) for engineering services to provide design and construction services for a new turn lane on Forest Run Drive at the intersection of Wickham Road, Project I03613 - \$12,500 and approval of a project budget for \$15,000 to be funded by an appropriation of Transportation Impact Fees.
- b. Supplement No. 153 to the continuing consultant contract (Frazier Engineering) for engineering services to provide design and construction services for miscellaneous sidewalk improvements at four locations, Project No. I03200 - \$11,000 and consolidation of four separate project budgets (Hibiscus Boulevard, University Boulevard, Fee Avenue, and Edgewood Drive) into one project budget.
- c. Approval of an interlocal agreement with Brevard County for the contribution of \$500,000 of City Transportation Impact Fees to widen Croton Road, Project No. 98310.

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- d. Transfer of \$7,500 from General Fund Contingency to establish a budget for historic preservation planning.
- e. Purchase of one Lifepak 12-lead ECG defibrillator/monitor unit and accessories, Medtronic Physio-Control, Redmond, Washington - \$22,538.15.
- f. Purchase of two Toro Greensmaster 3250-D mowers and a Toro SandPro 3020 trap rake, Wesco Turf Supply, Inc., Lake Mary, FL - \$54,513.96.
- g. Award of \$5,682 in 2002-2003 Community Development Block Grant, Booker T. Washington (BTW) Youth Initiative funds to the Center for Drug-Free Living of Brevard County to implement Village House program activities in the BTW neighborhood.
- h. RESOLUTION NO. 1834: A resolution authorizing submittal of an application to the Tourist Development Council for a \$50,000 grant through the Capital Facilities Grant program to provide 50% financing for lighting of three Southwest Park soccer fields.
- i. RESOLUTION NO. 1835: A resolution adopting the Brevard MPO Greenways and Trails Map for the Melbourne area.

At this point (12:00 a.m.), moved by Poole/C. Palmer to postpone the remainder of the agenda items until the next meeting (August 12). Motion carried. (Walker, Hand and Buckley voted nay.)

Items 17 – 22 postponed until the August 12 meeting.

- 17. FINAL PLAT APPROVAL (SD-2001-04C) PINE CREEK, PHASE THREE SUBDIVISION: (Public Hearing) A request for final plat approval for Pine Creek, Phase Three Subdivision, on a 9.46-acre portion of a 42.07-acre parcel, zoned R-1B (Single-Family Residential), located on the north side of Eber Road, east of Dairy Road. (Owner - 127th Avenue Associates, Ltd., Courtelis Company its General Partner) (Applicant - Hassan Kamal) (Representative - B.S.E. Consultants, Inc.) (P&Z Board - 7/03/03)
- 18. COUNCIL ACTION RE: A request for a variance from the Subdivision Regulations, Section 29-4 to permit the division of a single platted lot into three or more lots of the NASA Corporate Center Subdivision, located on the south side of NASA Boulevard, west of Atlantis Road and Commerce Drive, and east of Wickham Road. (Owners - Michael & Jacqueline Bandish) (Applicant/Representative - Bruce Moia) (P&Z Board - 7/03/03)
- 19. ORDINANCE NO. 2003-53 (Z-2003-956AD/LDR-2003-06): (First Reading/Public Hearing) An ordinance amending Appendix B, Article XVIII, Supplementary District Regulations by modifying the boundaries of the recently created overlay district in the Downtown Eau Gallie area, within the C-3 zoning district located west of the Indian River Lagoon, south of Eau Gallie Boulevard, and east of Avocado Avenue. (P&Z Board - 7/03/03)
- 20. ORDINANCE NO. 2003-54: (First Reading) An ordinance amending Chapter 23,

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Retirement and Pensions, Article VI, Police Officers' Pension Plan to allow the Police Chief to opt out and become a member of the General Employees' Pension Plan and providing for a 70% market cap on investments in common stock, capital stock and convertible securities.

21. ORDINANCE NO. 2003-55: (First Reading) An ordinance amending Chapter 23, Retirement and Pensions, Article VII, General Employees' and Special Risk Class Employees' Pension Plan, amending definitions to provide for clarification of language clarifying that permanent part-time employees are covered by and the Police Chief may be covered by the pension plan.
22. COUNCIL ACTION RE: Appointment of one member to the Building and Construction Advisory Committee
23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Vice Mayor Contreras asked staff to investigate the feasibility of a Charter change providing for Council Members to be elected by a majority rather than a plurality of votes. He asked staff to return to the next meeting with election cost information and a draft ordinance outlining the amendment.

The City Manager confirmed that the Brevard County Commission voted to schedule the one-cent sales tax referendum for the November ballot.

Mr. Schluckebier informed Council that he has received a communication from Congressman Weldon regarding the dredging of Lakes Hell N'Blazes and Sawgrass. A workshop meeting has been scheduled for August 18 at 10:00 a.m. in Viera.

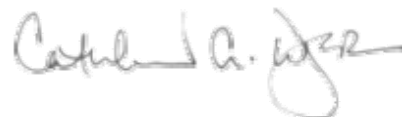
Additionally, he noted that Senators Graham and Nelson are working on securing federal assistance with the F-16 fighter jet training issue.

Attorney Gougelman reported that the County Commission passed the Brevard County Water/Sewer District Ordinance.

24. ADJOURNMENT

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

The meeting adjourned at 12:10 a.m.



City Clerk – 7/31/2003

Approved by Council August 12, 2003

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