

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
AUGUST 12, 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 Kenneth Smith, Church of God, Melbourne, 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 announced that Design Studio Ferrazzano, 432 South Babcock Street, received the June Beautification Award – retail sales category.

5. APPROVAL OF MINUTES – July 22, 2003 Regular Meeting and July 29, 2003 Special Meeting

Moved by E. Palmer/Hand for approval of the July 22, 2003 Regular Meeting and the July 29, 2003 Special Meeting minutes.

(Note: The City Clerk distributed the July 22 minutes with a request from Mrs. Poole for a verbatim transcript of Item 8 (Causeway Center) from the point where she made her motion.)

Mrs. Poole stated that she won't vote for approval of the minutes until the verbatim she requested has been prepared. (Council policy requires City Council to approve a verbatim request made by a Council Member.)

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

Mayor Buckley asked each Council Member whether the verbatim request should be approved. Mr. Contreras questioned approving the verbatim request since the minutes have been approved. Mayor Buckley said that Mrs. Poole has a question regarding the

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action that was taken. He added that he does not have a problem with the request. Following a brief discussion, City Council approved the request for the verbatim with Council Member Hand and Vice Mayor Contreras voicing opposition.

6. CITY MANAGER'S REPORT

No additions/no questions.

7. PUBLIC COMMENTS

Bill McCord, Acting Planning and Economic Development Director, announced that he is leaving the City of Melbourne to work for Leon County. He expressed appreciation to Mayor and Council and staff and said that he has enjoyed working for the City.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2003-51 (A&V #259): (Second 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 & Kendre Townsend) (First Reading - 7/22/03)

Attorney Gougelman read Ordinance No. 2003-51 by title. No disclosures from Council/no comments from the public.

Moved by Poole/C. Palmer for approval of Ordinance No. 2003-51. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2003-52 (A&V #266): (Second 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) (First Reading - 7/22/03)

Attorney Gougelman read the ordinance by title. No disclosures from Council/no comments from the audience.

Moved by Hand/Walker for approval of Ordinance No. 2003-52. The roll call vote was:

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

Nay: None

Motion carried unanimously.

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10. 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.) (Postponed - 7/22/03)

There were no disclosures from Council. Mr. McCord reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the final plat with the following conditions:

- a. Any change to the final plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department. Any substantial change to the final plat will require review and approval by the Planning and Zoning Board, Local Planning Agency and City Council. A substantial change in the final plat includes, but is not limited to: 1) any increase in the number of lots; 2) a change to the street network; or 3) a change in the ownership status of the private streets.
- b. The applicant shall provide a form of surety equal to 110 percent of the construction cost as required by City Code, Chapter 29, Section 29-5 (c) (4) c. Such surety shall be in form acceptable to the City Manager and City Attorney.
- c. Provide an amendment to the Stormwater Maintenance Agreement in form and substance acceptable to the City Manager and City Attorney.
- d. Provide a recent signed original title opinion in accordance with City Code, Chapter 29, Section 29-5 (c) (4) d.
- e. Provide easements for a temporary cul-de-sac at the north end of Indian Oaks Drive.
- f. Provide warranty deeds conveying the tracts to the homeowners' association.
- g. Provide a Bill of Sale for the water and sewer lines and an easement for the water and sewer lines within the rights-of-way.

Mr. McCord confirmed for Mrs. Poole that the applicant provided an Environmental Impact Assessment report. The report indicates no scrub jays on site; however, the applicant will have to obtain permits for the gopher tortoises.

Dani Hoyt, BSE Consultants, said that the firm's on-staff environmentalist performed the Environmental Impact Assessment.

Moved by C. Palmer/E. Palmer for approval of SD-2001-04C with the conditions as recommended.

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Mrs. Poole said that the R-1B zoning provides for too many houses being built too close together. Therefore, she will not vote for this item.

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

11. COUNCIL ACTION RE (SDV-2003-01): 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) (Postponed - 7/22/03)

Mr. McCord briefed Council and reviewed the agenda report. The proposal was reviewed for compliance with City Code, Chapter 29, Section 29-8, Variances, and was deemed by the Planning and Zoning Board to comply with the variance review criteria. The applicant also requested that a waiver be granted from the Comprehensive Plan access management provision. At this time it is not appropriate to request a waiver from the City Council. Appendix D, Chapter 4, establishes the proper procedure for appealing a Comprehensive Plan policy.

The Planning and Zoning Board unanimously recommended approval of the variance request with the following conditions:

- a. Any further lot splits shall require re-platting of all of original Lot 4, or by seeking a variance as provided for in City Code, Chapter 29, Section 29-8.
- b. Any parceling of this property shall comply with the minimum lot size requirements of the Melbourne Zoning Code, unless a variance is granted by the Board of Adjustment.
- c. The creation of any public streets, rights-of-way or other public ways, or public tracts on the property shall require platting of all of these properties before or after development of all or a portion of the properties, and all owners of the parent Lot 4 shall join in with such plat. (This will not apply to the creation of private easements for drainage access or utilities.)
- d. Lot 4.02 is deemed to be a non-buildable lot. No structures other than public utilities, subdivision identification sign and landscaping shall be permitted on lot 4.02.

Mr. Palmer asked why Lot 4.02 is not buildable. Mr. McCord said it relates to the size – the lot is large enough for landscaping and signage only.

Mrs. Poole said she has a problem with the Planning Department and the Planning and Zoning Board accommodating every request in order to be flexible. She said that she read some information, which indicates that at least one lot was carved out illegally.

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Mr. McCord said that once the parent parcel becomes three or more parcels, there is a violation. This is the applicant's request to remedy that situation.

Mrs. Poole asked if Hughes Supply has indicated whether it is willing to share the driveway. Mr. McCord said that is not being considered as part of this request. However, the applicant has approached Hughes Supply, but staff does not know the status. Mr. McCord added that Lot 4 has access to Atlantis Road. The City does not want each lot receiving a series of driveways on this type of roadway, which will destroy the capacity of the roadway.

Bruce Moia, Mosby and Associates, representing the applicant, said that there are two issues – the subdivision variance and the driveway access. He explained that the property was divided before the applicant purchased the property. He added that it would be a nightmare to plat this property. Mr. Moia said that, with the exception of the lot that will be used for signage, everything is conforming. Additionally, the City Code allows for a large lot subdivision to be carved into smaller pieces at a later date. He pointed out that this action will not create any new roads; therefore he doesn't believe that this meets the definition of a subdivision.

Regarding the driveway, he said that the applicant met with City staff and was told that access to NASA Boulevard would not be a problem. Additionally, he (Bruce Moia) was told by staff that access to NASA should not be a problem. The applicant purchased the property based on that information and is now being told access is a problem.

Continuing, Mr. Moia outlined the reasons why he believes that the provision from the Comprehensive Plan does not apply in this case.

Mrs. Poole asked who from the City represented that access to NASA would be alright. Mr. Moia said he would rather not say.

Mayor Buckley asked Mr. Moia if he agreed with the stipulations. Mr. Moia said he agrees with the conditions related to the variance. The Planning and Zoning Board members couldn't decide the driveway issue, so they removed the staff condition.

Following a brief discussion, Mr. Moia said they would stipulate to no more dividing of the property without going through the platting process.

Mrs. Palmer referenced the map distributed by Mr. Moia, which outlines the distances between the existing driveways. She said that the driveway the applicant is proposing is 225' from the closest driveway. And, she does not know why the applicant is being singled out for denial of driveway access when some of the existing driveways are 80' and 100' apart.

Mayor Buckley encouraged Mr. Moia to obtain access through the Hughes site. Mrs. Poole stated that she does not want an entrance on NASA Boulevard.

Moved by Hand/E. Palmer for approval of SDV-2003-01 with the four conditions

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recommended by the Planning and Zoning Board. Motion carried. Mrs. Poole voted nay.

12. 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. (Postponed - 7/22/03)

Attorney Gougelman read Ordinance No. 2003-53 by title.

Mr. McCord briefed Council. The ordinance would modify the recently created overlay district in the Downtown Eau Gallie area. It would apply to a portion of the Eau Gallie Redevelopment District located west of the Indian River Lagoon, south of Eau Gallie Boulevard, north of Montreal Avenue, and east of Avocado Avenue.

If enacted the building heights on several blocks in the old Downtown Eau Gallie core retail/office area will be significantly reduced from what is permitted in the existing code. The recently passed ordinance already impacts building setbacks for buildings greater than four stories.

At the Planning and Zoning Board meeting several persons who own property in the area spoke against extending the overlay area to the south of Eau Gallie Boulevard. The Planning and Zoning Board expressed concern that the ordinance would eliminate development advantages found in the central business district and would be inconsistent with the Comprehensive Plan. The board recommended denial.

A representative of a property owner located in the affected area submitted a petition of opposition to expanding the overlay district. Under the provisions of the City Code, the petitioners did not provide a letter of intent to file a petition within seven days of the Planning and Zoning Board hearing on this item (July 3, 2003). The petition was submitted on July 22, 2003, within the 21 days permitted to file a petition under the Code. The petition is signed by the owners of 29.63% of the area of the lots affected by the proposed ordinance.

Mr. Palmer pointed out that the entire Downtown area had been zoned C-3 since 1972. City staff recommended the change in zoning to provide for the stair casing of building heights leading to the river to ensure that the river view was not restricted. He added that the area being considered as part of this agenda item was separated, which resulted in selective zoning. Mr. Palmer said that the City needs to be fair with everyone and return the entire area to C-3 zoning with 80' building heights. He noted that the economy will dictate whether a building will be 80' in height.

Mr. McCord said that the recommendation to stair case the building heights came from the consultant who prepared the redevelopment plan. And, Council approved the change.

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Mr. Palmer informed Council that previously his church tried to build an 80' structure; however, it did not receive federal funding. Now the church is restricted to 35' or 40'.

Richard Hester, 617 Eau Gallie Boulevard, said that he is a former member of the Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee. The committee spent six months working on the overlay district. It was discussed numerous times at public meetings. Not everyone agreed; however, there was not a great outcry. He added that if this change is made, it will set back everything the advisory committee worked for. He stressed that this is what the people in the Eau Gallie area want.

Regarding Mr. Palmer's comment about the church, Mr. Hester said it was the committee's understanding that a conditional use would be considered for a good project.

Mayor Buckley asked Mr. Hester to clarify his position. Mr. Hester said that he is opposed to the proposed ordinance; however, he is in favor of the original overlay area.

Mrs. Palmer pointed out that 29% of the people in the central core area are opposed to this ordinance. She asked Mr. Hester if he saw this kind of opposition with the overlay area to the north. Mr. Hester said no and added that the opposition to the overlay district is strictly in the central core area. The committee's vision was that the core area would fill in. He added that a representative from the proposed "Pineapple House" development talked to the committee and the members decided that in the long run this project would be good for the area.

Responding to Mrs. Palmer, Mr. Hester said he is not aware of any opposition from St. Paul's United Methodist Church to the initial overlay district.

A brief discussion followed.

Clifton McClelland, 1901 South Harbor City Boulevard, attorney representing Pineapple House of Brevard, Inc., referenced the petition in opposition, the recommendation from staff for denial and the recommendation from the Planning and Zoning Board for denial. He added that he believes it is poor planning to bring down the height of buildings in the core area. The whole concept of preventing urban sprawl is to place development where infrastructure is present.

Continuing, Mr. McClelland said property owners in Downtown Eau Gallie feel that they have not experienced the advantages that other areas of the City have experienced since the merger of Eau Gallie and Melbourne. If the City Council approves this ordinance, it will take away the economic engine in this area. He encouraged Council to vote against the ordinance.

Mrs. Poole pointed out that One Harbor Place (in Downtown Melbourne) was promoted as a great project; however, it went bankrupt.

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Mayor Buckley agreed that approval of this ordinance would result in taking funding away from Downtown Eau Gallie. He added that he has no objection to removing the original overlay district on the north side and returning the entire area to C-3 zoning.

Mrs. Palmer said she spoke with George Alexander, Chairman of the advisory committee. He indicated that the committee would prefer that the entire area return to C-3 zoning rather than placing an overlay district on this property.

Moved by Contreras/Walker to deny Ordinance 2003-53.

A brief discussion followed.

The question was called. Motion carried unanimously.

Recessed: 9:00 p.m.
Reconvened: 9:13 p.m.

Mayor Buckley polled Council regarding the recommendation by Mr. Palmer to return the area north of Eau Gallie Boulevard to C-3 zoning. By consensus, Council agreed to authorize staff to begin the process of repealing the initial overlay district.

13. ORDINANCE NO. 2003-54: (First Reading) An ordinance amending Chapter 23, 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. (Postponed - 7/22/03)

Attorney Gougelman read Ordinance No. 2003-54 by title.

Moved by Poole/Walker for approval of Ordinance No. 2003-54. Motion carried unanimously.

14. 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. (Postponed - 7/22/03)

The City Attorney read the ordinance by title.

Moved by Hand/E. Palmer for approval of Ordinance No. 2003-55. Motion carried unanimously.

15. COUNCIL ACTION RE: Appointment of one member to the Building and Construction Advisory Committee. (Postponed - 7/22/03)

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Moved by Poole/E. Palmer to reappoint Lee Bohlmann. Motion carried unanimously.
(Term: August 9, 2003 – August 8, 2006)

NEW BUSINESS

16. COUNCIL ACTION RE: Consultant contract for Fee Avenue Pool design, Herbert J. Sands, AIA, Project No. C03103 - \$66,000.

Mr. Ralls reviewed the agenda report.

Moved by Poole/E. Palmer that a new project designated as Fee Pool Design, Project No. C03103, be created with a budget of \$67,500. Motion carried unanimously.

17. CONSENT AGENDA:

Mr. Ralls provided an overview of Item “b” and responded to general questions.

Moved by Hand/E. Palmer for approval of 17 “a – n” as recommended. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Supplement No 154 to the continuing consultant’s contract for engineering services to provide design and construction services for replacement of drainage pipes on Vesta Circle, Project No. I03607 - \$19,200.
- b. Approval of budget transfer of \$484,283 from Water & Sewer Miscellaneous Projects to the Croton Road Widening project budget for waterline relocations associated with Croton Road widening, Project No. C98310.
- c. Approval of an interlocal agreement with Brevard County for auto-aid first response fire protection and rescue service.
- d. Award of annual contract for the performance of analysis of effluent in the wells, groundwater, wastewater, and sludge, U.S. Biosystems, Inc., Boca Raton, FL - \$46,887.
- e. Annual contract for the performance of sampling and monitoring services associated with the RO Plant concentrate discharge, Flowers Chemical Laboratories, Inc., Altamonte Springs, FL - \$33,345.
- f. Purchase of an Aurora #700-0833-644 rotating assembly, Custom Pump and Controls, Inc., Tampa, FL - \$17,855.
- g. Purchase of a 2004 Chevrolet Express Cargo Van, Maroone Chevrolet, Pembroke Pines, FL - \$17,941.

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- h. Approval of a revision to the IAFF Contract Article 34 “vacation leave” to delete the following language: “However, the total number of solo paramedics allowed off, in any combination of Lieutenants, Drivers and Firefighters shall not exceed three.”
- i. Approval of a budget adjustment based on actual revenue received for the program year ended June 30, 2003 resulting in a \$30,205.22 increase in 2002-2003 SHIP Revenue and Expenditure budgets.
- j. Approval of an \$11,466.31 increase in 2001-2002 HOME Revenue and Expenditure budgets and a \$26,537.75 increase in 2002-2003 HOME Revenue and Expenditure budgets.
- k. Approval of an extension of HOME Tenant Based Rental Assistance (TBRA) benefits.
- l. Approval of technical revisions to the 2001-2004 SHIP Housing Assistance Plan and authorization to submit revisions to the Florida Housing Finance Corporation.
- m. Approval of the sale of forfeited Ferrari Maranello and authorization for City Manager to execute all documents required concluding the sale.
- n. Resolution No. 1836: A resolution authorizing submittal of an application for Phase VIII of the Local Law Enforcement Block Grant (LLEBG) program through the Bureau of Justice, U.S. Department of Justice in the amount of \$140,455 to purchase radios and to deploy officers on an overtime basis into hot-spot problem areas.

Mrs. Poole left the Council Chamber at 9:30 p.m.

18. RESOLUTION NO. 1837: A resolution adopting the interlocal agreement for participation in the one cent infrastructure sales tax, approval of the project list, and authorization for staff and elected officials to encourage its approval by voters.

Attorney Gougelman read Resolution No. 1837 by title. Mr. Schluckebier reviewed the agenda report.

Moved by Contreras/Walker for approval of Resolution No. 1837 adopting the interlocal agreement for the one percent discretionary infrastructure sales surtax; authorization for the City Manager to execute the interlocal agreement; authorization for the City Manager, staff, and elected officials to participate in educational and other appropriate meetings in furtherance of this matter; and approval of the project list. Motion carried. Mrs. Palmer voted nay and Mrs. Poole was absent from the Council Chamber.

Mrs. Palmer stated that she is opposed in principal to the tax; however, she believes a good project list has been developed.

Mrs. Poole returned to the Council Chamber at 9:38 p.m.

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19. ORDINANCE NOS. 2003-56 THROUGH 2003-61 – PROVIDING FOR ANNEXATION, COMPREHENSIVE PLAN AMENDMENT AND ESTABLISHMENT OF ZONING: (Owners/Applicants - Irene Guy and Old Catholic Church in America, Central Florida, Inc.) (Representatives - Irene Guy and Richard E. Torpy & Associates) (P&Z Board - 7/17/03)

- a. Ordinance No. 2003-56 (AR-2003-144A): (First Reading/Public Hearing) An ordinance providing for the annexation of 2.16 acres, located on the west side of Dairy Road, south of Florida Avenue.

Ordinance No. 2003-57 (CPA-2003-07A): (First Reading/Public Hearing) An ordinance establishing a mixed use Commercial/Low Density Residential Land Use on a 1.58-acre parcel located on the west side of Dairy Road, south of Florida Avenue.

Ordinance No. 2003-58 (Z-2003-959A): (First Reading/Public Hearing) An ordinance establishing a C-1A (Professional Offices and Services) use district on 1.58 acres, located on the west side of Dairy Road, south of Florida Avenue.

- b. Ordinance No. 2003-59 (AR-2003-144B): (First Reading/Public Hearing) An ordinance providing for the annexation of 4.82 acres, located on the west side of Dairy Road, north of Florida Avenue.

Ordinance No. 2003-60 (CPA-2003-07B): (First Reading/Public Hearing) An ordinance establishing a Low Density Residential/Commercial land use on a 1.02-acre parcel and a Low Density Residential land use on a 2.67-acre parcel and a .53-acre parcel, located on the west side of Dairy Road, north of Florida Avenue.

Ordinance No. 2003-61 (Z-2003-959B): (First Reading/Public Hearing) An ordinance establishing an R-P (Residential-Professional) use district on 1.02 acres and R-1AA (Single-Family Residential) use district on 3.276 acres, located on the west side of Dairy Road, north of Florida Avenue.

Attorney Gougelman asked Council to consider items “a” and “b” separately. He read Ordinance Nos. 2003-56, 2003-57 and 2003-58 by title.

Mr. McCord reviewed the agenda report. An area property owner has filed a valid petition opposing the zoning action. The petition protesting the Comprehensive Plan Amendment was not filed within the timeframe outlined in the City Code. The petition indicates that 61.17% of the property owners of the land area within 500 feet of the affected properties are opposed to the land use and zoning requests. Therefore, a six-sevenths vote will be required at second reading to approve the zoning action.

Mr. McCord referenced the letter dated August 8 to Paul Gougelman from Nicholas Tsamoutales, who is opposed to the annexation and land use/zoning amendment proposed by the Old Catholic Church. Mr. Tsamoutales is not opposed to the annexation

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and land use/zoning proposed by Irene Guy. Mr. Tsamoutales's letter includes correspondence from his wife, Sharolyn Tsamoutales.

Mrs. Palmer asked if the people who signed the petition are opposed to both requests. Mr. McCord explained that the annexation, Comprehensive Plan/zoning amendments were presented as one application with two separate property owners. It is his understanding that there is no opposition to the annexation and that opposition is to the land use and zoning, primarily on the southwest corner.

Mayor Buckley opened the public hearing.

Steven Kellner, 901 Whisperoak Drive, member of the Whisperwoods Homeowners' Association Board of Directors, stated that the Board of Directors is unanimously opposed to any rezoning, other than residential. He confirmed that they have no problem with the annexation. He added that the residents are concerned about traffic; about whether the property is large enough to accommodate a church; the possibility of abandoned/vacant businesses if the businesses are not viable; and a concern that any zoning other than residential would devalue the surrounding property.

Richard Torpy, 202 North Harbor City Boulevard, attorney representing Father Conway and the Old Catholic Church, asked the members from the church in support of this action to stand (approximately 20-plus people stood). Mr. Torpy explained that when Father Conway bought the property he contacted Brevard County to determine if it was zoned properly for a church. He was assured this was the case when he purchased the property. However, the County said they made a mistake and that a conditional use would be required. The neighbors immediately to the west – Tsamoutaleses – immediately objected. Father Conway went to great lengths to educate the residents. Letters were sent to everyone within 1,000' and a meeting was conducted; many residents participated. There were many questions; however, the general consensus was that there was not a lot of opposition to a local, community church.

Attorney Torpy informed Council that the church covenants restrict membership to 100. Once the church reaches that level, it must seek a site for a new church. Unfortunately, the conditional use process through the County provides that if the conditional use is going to create a 15% diminished value of adjacent property, the County Commission must deny the request. The applicant presented property appraiser reports, which showed only a 6% decrease in value of homes located adjacent to churches. The point is that the concern about decreased property values was not borne out.

Continuing, Mr. Torpy said that there has been a successful campaign by Mrs. Tsamoutales to drum up opposition to the annexation. He added that any business by definition can fail and that is not a proper consideration for zoning.

Mr. Torpy discussed the history of the property and noted that it previously had a conditional use for a group home. He questioned whether single-family residential zoning was appropriate for a corner parcel, which in a few short years will be at the intersection of two, four-lane roads. The use requested is the lowest commercial use that could be

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requested. He added that he has seen the letter from Mrs. Tsamoutales where she is encouraging City Council to ask Father Conway personal questions. Mr. Torpy stressed that this is about zoning so they are not going to address the personal questions. He asked Council to approve the request and allow the site plan process to address the issues.

Mayor Buckley asked Mr. Torpy if his client would continue if Council approved the annexation but not the Comprehensive Plan Amendment and zoning. Mr. Torpy said he does not know what benefit this would be to Father Conway. Mrs. Poole asked Mr. Torpy if they want to pay taxes to the City of Melbourne without the requested zoning. Mr. Torpy said there are clearly benefits to being in the City of Melbourne, including water and sewer. And, if the zoning is approved, the benefits will outweigh the expenses.

Mrs. Walker said that the concept of limited membership is strange to her.

Father Conway, Old Catholic Church, discussed the history of the Old Catholic Church in America and he elaborated on the view of the church.

A brief discussion followed regarding the questions raised by Mrs. Tsamoutales.

Philip Nohrr, attorney representing Mr. and Mrs. Tsamoutales, said that the Tsamoutaleses are opposed to the annexation, land use designation and the zoning. Their opposition relates to the property located south of Florida Avenue, not north. He referenced the County's denial of the conditional use and quoted the following from the County's *Findings of Fact*:

1) The Board finds that the conditional use in this case will have an adverse impact on adjacent property due to the number of persons expected to be using the property, the alteration in traffic patterns and the increased noise due to the use of the property by 115 people in a single-family residential neighborhood; 2) The Board finds that the proposed use will differ significantly from the single-family houses adjacent and nearby and that the hours and function of the property will not be compatible with the adjacent neighborhood; and 3) The Board finds there is a substantial diminution in value of the abutting residential property as a result of the proposed use.

Mr. Nohrr said that the findings make it clear that there were factors other than diminution of value, which resulted in the denial. He added that the church does not want Council to have the site plan at this point. The applicant would rather deal with staff. If Council approves this request, Council will not see the site plan. Mr. Nohrr said he believes that this request has been crafted to do an end run around what the County did. He stressed that there is nothing that has changed with this request since the County denied the request.

Regarding speculation about Florida Avenue increasing to four lanes westward, there is currently no right-of-way to connect this portion to Hollywood. He said if/when that occurs, that would be the time to talk about this property being zoned C-1A.

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Attorney Nohrr stated that the Tsamoutaleses are deeply concerned about having a church next to them. There is no commercial on the other corners of that intersection. The request for a mixed-use land use and C-1A zoning are out of character. Mr. Nohrr asked Council to deny the annexation. If the annexation is approved, he asked that a low-density land use be considered along with zoning that would require a conditional use for a church.

Nicholas Tsamoutales, 3015 Florida Avenue, stated that he and his wife own the property adjacent to the property being proposed for a church. He added that he and his wife are not opposed to churches or religious concepts/beliefs. Rather, this is a land use and credibility issue. He explained that the applicant originally told his wife that the small building on the site would house the church and the larger building would accommodate the hall and residence. However, when his wife saw the plan, it provided for an additional 8,500 s.f. of buildings and a path around the perimeter for “seniors to exercise.”

Mr. Tsamoutales discussed his concerns with the applicant as follows: the applicant indicated that he does not want children involved with this church; he is a college professor but will not answer questions about schooling, etc.; his involvement with Mirial Corporation; thirteen telephone numbers listed in the white pages under the same address; and his affiliation with Saint Peter’s Church. Additionally, the applicant has indicated that he won’t remove senior center as a possible use on the site. Mr. Tsamoutales said he visited the Palm Bay Senior Center and noted 79 cars in the parking lot at 7:00 a.m. and 57 cars in the lot during the evening.

Continuing, he stated that he believes the applicant has a different agenda. Mr. Tsamoutales submitted the following: page from the Yellow Pages with Saint Peter’s Church highlighted; page from the White Pages with 13 telephone numbers highlighted for David Conway, 1135 North Highway A1A; outline of Mr. Tsamoutales’s personal observations from visiting 26 churches in the area to observe number of cars parked, whether residence located on property, whether walkway/exercise facility on property and size of church; and public information about Mirial, Inc.

Mr. Tsamoutales elaborated on his knowledge about Mirial Corporation. He concluded by asking Council to deny the entire request.

Sharolyn Tsamoutales, 3015 Florida Avenue, adjacent property owner, said that she understands that this is a zoning issue; however, it is also a credibility issue. She elaborated on numerous misrepresentations and untruths regarding the site and planned use of the site. Mrs. Tsamoutales referenced the petition and said over 60% of the area owners are opposed and that should speak volumes.

Ms. Tsamoutales outlined her attempts to find background information about the church or anyone affiliated with Father Conway. She stated that the applicant is asking to change the character of the neighborhood and it just doesn’t fit. She asked Council to deny the request for annexation based on the requested zoning and the inconsistencies.

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Irene Guy, applicant for property north of Florida Avenue, discussed the history of the property and noted that after she sold the property (church property) the house fell into total neglect. She stated that the corner is too congested for a single-family house. She added that she supports Father Conway's request to build a church.

Father Conway, applicant for property south of Florida Avenue, said that he believes he has been seriously maligned. He stated that he came to the City with the intent to build a church. He responded to several of the allegations and said that he has 13 telephone numbers (property on Highway A1A) because the property is used as a retreat with a telephone in each room. Also, Miriel Corporation is a church owned commercial operation. Father Conway stressed that this is a zoning issue. And, he said he can't imagine property being located on the corner of two arterial roadways not being zoned C-1A.

Father Conway elaborated on the condition of the house on the property before he cleaned it up. It was full of needles, trash, debris, etc. He questioned how a church would be more damaging to the community than the previous house on the property. He concluded by saying that he stopped answering Mrs. Tsamoutales's questions based on advice of counsel. Each time he would provide an answer, Mrs. Tsamoutales would dispatch the information through back channels to the County Commissioners.

Council made the following disclosures:

Vice Mayor Contreras spoke with Phil Nohrr on August 11 concerning Mrs. Tsamoutales's opposition to C-1A zoning. Council Member Ed Palmer said he spoke to Nick Tsamoutales the other night, and he is opposed to the request for annexation and use of the property. Mrs. Poole said she spoke to Mr. Tsamoutales last night at the Space Coast League of Cities meeting and he mentioned that he is opposed to the request. Mrs. Walker said she also spoke to Mr. Tsamoutales and he indicated that he is opposed. Mrs. Hand said she spoke to Mr. Tsamoutales and he expressed opposition. Mayor Buckley said he received a call from Mr. Tsamoutales and Mr. Nohrr – both expressed opposition.

Mrs. Palmer stated that she is in favor of the annexation but would vote against the zoning so that the applicant would have to apply for a conditional use for a church. She informed Council that the fraternity parties previously held on the property were well known. She asked why the neighbors weren't opposed to that activity and said that a church is a much less invasive use. Mrs. Palmer said she would understand concerns related to the church property being used as a soup kitchen or homeless shelter.

Attorney Gougelman said that disclosures should have taken place at the beginning of the item to allow all parties to comment. He noted that the public hearing will have to be re-opened. Mayor Buckley opened the public hearing.

William Marcus, 3020 West Florida Avenue, commented from the audience on the house previously being used as a fraternity house.

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Laraine Schoma, Indialantic, member of Father Conway's church, said that the previous use of the property was a disgrace. She added that they are prepared to stipulate that there will be no soup kitchen or homeless shelter on the property. Additionally, she noted that they have planned Sunday School for younger families. The walkway will be more of a meandering path with benches. Also, she said she is very disappointed that politics entered into this and said if she had an opportunity she would have talked to each Council Member last night (at the Space Coast League of Cities meeting).

Nicholas Tsamoutales discussed the property in Indialantic used as a retreat and questioned where Father Conway taught college.

Father Conway stated that this is a zoning issue. He questioned how the issue of where he taught and where he attended college relates to the zoning on the southwest corner of Dairy Road and Florida Avenue.

That concluded comments from the public.

Moved by Poole/Hand to deny Ordinance No. 2003-56.

Mrs. Palmer said that there are plans to annex the Tsamoutales property into the City. She asked if an enclave will be created if this property does not annex. Mr. Schluckebier replied no.

The question was called. The roll call vote was:

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

Nay: Buckley

Motion carried.

Mayor Buckley stated that he believes the property should be annexed.

Attorney Gougelman noted that action is not required on the Comprehensive Plan Amendment and zoning ordinances (Ordinance Nos. 2003-57 and 2003-58) since the annexation ordinance was denied.

Attorney Gougelman read Ordinance Nos. 2003-59, 2003-60 and 2003-61 by title. There were no disclosures by Council. Mayor Buckley opened the public hearing.

Andre Merrill, 3310 South Dairy Road, said he bought his property 15 years ago after being told that the 20-acre corner would remain single-family. He stated that he would prefer the property remain single-family.

That concluded comments from the public.

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Moved by Contreras/Buckley for approval of Ordinance No. 2003-59. Motion carried.
Mrs. Poole voted nay.

Moved by Hand/Contreras for approval of Ordinance No. 2003-60. Motion carried. Mrs.
Poole voted nay.

Moved by Hand/Walker for approval of Ordinance No. 2003-61. Motion carried. Mrs.
Poole voted nay.

20. ORDINANCE NO. 2003-62: (First Reading) An ordinance amending Chapter 30 of the City Code, entitled Taxation; relating to the Communications Services Tax; providing for intent; establishing a local Communications Services Tax rate; and electing to impose an additional tax in lieu of collecting permit fees.

Moved by Poole/E. Palmer for approval of Ordinance No. 2003-62. Motion carried
unanimously.

21. ORDINANCE NOS. 2003-63 AND 2003-64: Proposed amendment to the Charter and Chapter 11, entitled Elections.

- a. Ordinance No. 2003-63: (First Reading) An ordinance amending Sections 2.07 and 5.05, City Charter; providing for a referendum election and ballot language; relating to vacancies on Council and the time and manner of elections; providing that the ordinance shall become effective if approved by the voters during the November 2003 election.
- b. Ordinance No. 2003-64: (First Reading) An ordinance amending Chapter 11 of the City Code, entitled Elections; revising the provisions relating to tie votes; providing for a regular and special primary election; providing for a regular and special general election.

Attorney Gougelman read Ordinance Nos. 2003-63 and 2003-64 by title.

From the agenda report: At the July 22 City Council meeting, Vice-Mayor Contreras asked staff to investigate the feasibility of a Charter change providing for Council Members to be elected by a majority (more than 50%) rather than a plurality of votes. The current Charter provides that our elections are by plurality – the person receiving the highest number of votes is declared elected.

Mrs. Poole said she was ready to make a motion. Mr. Contreras asked to speak on the item first since he is the proposer. Mrs. Poole's motion to deny Ordinance No. 2003-63 did not receive a second.

Mr. Contreras said it is interesting that in the City of Melbourne the individual who receives the most votes – not the majority of votes – is declared the winner. In light of the current California gubernatorial race, he asked staff to look at our system. As a

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result, he is proposing that we let the voters decide in November 2003 whether the Charter should be changed.

Mr. Contreras distributed City election information from 1992, 1994, 1996 and 2000. It reveals that six seats in various districts were not elected by a majority vote; therefore, his recommendation is to proceed with the change.

Moved by Contreras/Walker for approval of Ordinance No. 2003-63.

Mrs. Poole said she has a problem with the proposal. She noted that the City's elections have been conducted the same way (by plurality) since 1888. And, this is the way it is done in most cities in Brevard. She stated that she is opposed to spending this amount of money to assure that only one person runs against another candidate.

A brief discussion regarding who from City Council would run for Mayor followed.

Mrs. Hand said she feels like "if it ain't broke, don't fix it."

Mrs. Palmer pointed out that this proposal wouldn't restrict candidates. There could be as many as 10 for one seat in the primary. If one candidate receives a majority of votes, there would be a winner or the two receiving the highest number of votes would go on to the general election. Everyone who wanted to run would be able to run. And, there would be no question about whether the candidate elected would be the people's choice.

Mr. Palmer questioned the rationale for the change. He said the system we have now functions properly and we have elections with no controversy.

Bennie Hopkins, 624 Williams Street, representing the South Brevard Civic League, said he believes Mr. Contreras's intentions are good, but the results would be negative. He added that minorities, specifically African-Americans, represent a small percentage so minority candidates would never receive 51% of the vote. He recommended the City consider single member districts.

Mr. Contreras said he talked to quite a few people who were shocked to learn that in a democracy – a rule by the majority – someone can be elected with a minority of the vote. He stressed that is the sticking point of this issue.

Mrs. Hand discussed the additional cost to candidates who would go through two elections. She noted that it is difficult now to receive campaign funds.

Mrs. Poole said she understands the thrust behind this change, especially since Dr. Hynes sent an e-mail and letter in support of the change.

The question was called. The roll call vote was:

Aye: Walker, C. Palmer and Contreras

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Nay: E. Palmer, Poole, Hand and Buckley

Motion failed.

Since Ordinance No. 2003-63 was denied, no action was necessary on Ordinance No. 2003-64.

22. ORDINANCE NO. 2003-65 AND RESOLUTION NO. 1838 RELATING TO CHAPTER 30 OF THE CITY CODE, ENTITLED TAXATION:

- a. Ordinance No. 2003-65: (First Reading) An ordinance amending Chapter 30, Section 30-65 of the Code of Ordinances, by requiring that an application for Ad Valorem Tax Exemption be submitted prior to the decision to locate or expand a business in the City of Melbourne.
- b. Resolution No. 1838: A resolution adopting the Ad Valorem Tax Exemption program guidelines in accordance with Chapter 30 of the City Code.

Attorney Gougelman read Ordinance No. 2003-65 and Resolution No. 1838 by title.

Planning and Economic Development Administrator Cindy Dittmer briefed Council on the item. Mrs. Poole said that she does not support tax abatement because each business should make it on its own; however, this is an improvement.

Moved by E. Palmer/Hand for approval of Ordinance No. 2003-65. Motion carried unanimously.

Moved by Walker/Hand for approval of Resolution 1838. Motion carried unanimously.

23. ORDINANCE NO. 2003-66: (First Reading) An ordinance amending Chapter 23, Retirement and Pensions, Article V, Firefighters' Pension Plan by providing an additional supplemental monthly benefit effective October 1, 2003.

Attorney Gougelman read Ordinance No. 2003-66 by title.

Moved by Poole/Hand for approval of Ordinance No. 2003-66.

In response to Council Member Ed Palmer, Director of Finance Michele Ennis said the increase was the result of a negotiated change in the IAFF contract. The City's actuary calculated the adjustment, and it is a one year calculation.

The question was called. Motion carried unanimously.

24. ORDINANCE NO. 2003-67 (LDR-2003-05): (First Reading/Public Hearing) An ordinance amending Section 10-84 of the City Code, by allowing City staff to issue a Certificate of Appropriateness in the Babcock Street Redevelopment District for exterior color and signage changes, which comply with the Babcock Street Architectural Guidelines.

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(Architectural Review Board - 3/19/03) (Babcock Street Redevelopment Committee - 3/26/03) (P&Z Board - 7/03/03)

Attorney Gougelman read the ordinance by title.

Mrs. Poole said she is opposed to this because all three redevelopment areas should have to appear before the Architectural Review Board for changes. One area should not be exempt. Mayor Buckley agreed and said review by the Architectural Review Board should be standard.

Moved by Poole/E. Palmer to deny Ordinance 2003-67. Motion carried unanimously.

25. COUNCIL ACTION RE: Request by Council Member Ed Palmer for discussion of the Internal Auditor position.

Because it was close to midnight, Council agreed by consensus to postpone this item until the next meeting.

26. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Poole inquired about the status of AeroGroup. Mayor Buckley said they have not left and it is his understanding AeroGroup is trying to extract money from the City.

Mr. Schluckebier addressed the following:

- The City has received two requests for funding. One is from Brevard Tomorrow and the other is from the Office of Adjutant General, Department of Military Affairs, State of Florida. He noted that staff will review and analyze both requests.
- The person who placed the \$120,000 bid for the Ferrari has now amended the bid to \$110,000. Additional information will follow; however, if the bid is within the authorization level, he intends to sell the vehicle.
- The City Manager distributed a report from the Director of Finance regarding the Fleet Management and Purchasing Divisions. Initially, there were 38 questions raised by Council Member Ed Palmer. The external auditor addressed those questions under the purview of the annual audit; however, the answers were not detailed. In February, Mr. Palmer presented Mr. Schluckebier with the questions. Mr. Schluckebier said, in hindsight, he should have presented the questions to the full Council for direction on the amount of time to dedicate to this. Instead, he asked the City's Internal Auditor, through the Assistant City Manager, to address the questions.

Continuing, the City Manager said that apparently Council received information directly from the Internal Auditor regarding questions 1 - 15, which he (Mr. Schluckebier) was not aware of and which was improper. The report distributed at this meeting from the Director of Finance to the City Manager addresses questions 16-38. The Director of Finance's report took five business days to prepare. The Internal Auditor's response to

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questions 1 – 15 took five months to prepare. Additionally, the City Manager said he was not satisfied with the timeliness and quality of the Internal Auditor's work product and was very unhappy that he wavered from the established protocol on conducting audits.

Mr. Palmer asked where the report is from the Internal Auditor. Mr. Schluckebier said apparently he delivered it to City Council, and it is filled with inaccuracies. The City Manager added that the Internal Auditor works for the Assistant City Manager and ultimately the City Manager. Mr. Schluckebier stressed that the report prepared by the Internal Auditor is not a report that he would have submitted to Council. The report was supposed to be revised based on comments from the Assistant City Manager.

Mrs. Palmer asked why the external auditor was not able to answer the questions. Mr. Schluckebier responded that the firm answered the questions within the purview of the external audit and there were no findings.

Mr. Palmer said he wants the report from the Internal Auditor on (questions 1 – 15). Mr. Schluckebier said the manner in which the Internal Auditor handled this is unprofessional and unacceptable. The report will be a public record when it is final; however, it is not anywhere near final.

Mrs. Poole agreed that Council should not receive a report that isn't complete.

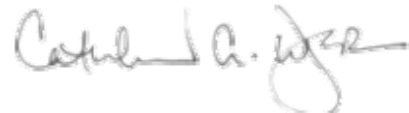
Following a brief discussion, Mr. Schluckebier said that he would distribute the Internal Auditor's report, which addresses the first 15 questions, within one business week.

Mrs. Palmer asked if the City property located at Laurie Street and Babcock Street (former Palms Theater) could be divided to expedite the sales process. She said that there are certain people/entities interested in parts of the property. Mr. Schluckebier said he would ask the Babcock Street CRA Advisory Committee to comment.

27. ADJOURNMENT

Moved by Hand/Contreras to adjourn. Motion carried unanimously.

The meeting adjourned at 12:13 a.m.



City Clerk – 8/21/2003

Approved by Council: August 26, 2003