

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
AUGUST 26, 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 Carol Glanton, Triumph Church, 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
	Cindy Dittmer	Acting Planning & Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley read the following proclamations:

“Commodore John Barry Day”, September 13, 2003; accepted by Ed Reilly, Ancient Order of Hibernians in America.

Recognizing and supporting the marriage between a man and a woman and expressing opposition to same sex marriages (signed by the Mayor and each member of City Council).

5. APPROVAL OF MINUTES – August 12, 2003 Regular Meeting

Moved by Walker/Hand for approval of the August 12, 2003 minutes. Motion carried unanimously.

Mrs. Poole referenced the verbatim that was prepared on a portion of the Causeway Center item from the July 22 City Council meeting. She noted that illegal action occurred, based on the verbatim, according to Robert’s Rules of Order, Revised. She summarized as follows: Her motion on the item was approved by a 4-3 vote – the Mayor announced that the motion passed. At that point, Mrs. Hand said she misunderstood, although the motion had been read back to Council three times, and changed her vote. The Mayor quickly announced that the motion failed. Mrs. Poole said that a member has a right to

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change his/her vote up until the time the vote is announced. After that, a unanimous consent of Council has to be given. On July 22, a unanimous consent was not given to Mrs. Hand to change her vote. She added that her (Mrs. Poole's) motion legally passed.

Mrs. Hand stated that there was a lot of confusion during this item on July 22. Members did not understand the motion. She added that when she realized that she had made a mistake, she changed her vote. Mrs. Hand added that Mrs. Poole has changed her vote on many items over the years. She asked Mr. Gougelman to address this issue.

Attorney Gougelman said that the issue Mrs. Poole is raising may possibly force Council to adhere to Robert's Rules of Order more closely. He said that boards that strictly adhere to Robert's Rules of Order drift into gridlock. He urged Council to remain the collegial body that it has been and be as deferential as possible.

A brief discussion followed.

6. CITY MANAGER'S REPORT

Mr. Schluckebier confirmed for Council Member Ed Palmer that the vehicle used by City Hall staff is presumed stolen.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2003-54: (Second Reading/Public Hearing) 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. (First Reading - 8/12/03)

Attorney Gougelman read Ordinance No. 2003-54 by title. There were no comments during the public hearing.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2003-54. 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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9. ORDINANCE NO. 2003-55: (Second Reading/Public Hearing) 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. (First Reading - 8/12/03)

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

Moved by Walker/Hand for approval of Ordinance No. 2003-55. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NOS. 2003-59 THROUGH 2003-61 – PROVIDING FOR ANNEXATION, COMPREHENSIVE PLAN AMENDMENT AND ESTABLISHMENT OF ZONING: (Owners/Applicants/Representatives - Irene Guy)

a. Ordinance No. 2003-59 (AR-2003-144B): (Second 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. (First Reading - 8/12/03)

b. Ordinance No. 2003-60 (CPA-2003-07B): (Second 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. (First Reading - 8/12/03)

c. Ordinance No. 2003-61 (Z-2003-959B): (Second 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. (First Reading - 8/12/03)

The City Attorney read each ordinance by title. There were no disclosures by City Council and no comments from the public.

Moved by C. Palmer/Contreras for approval of Ordinance No. 2003-59. 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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Moved by Contreras/E. Palmer for approval of Ordinance No. 2003-60. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Walker/Contreras for approval of Ordinance No. 2003-61.

Attorney Gougelman said that approval of the zoning ordinance is subject to the six-sevenths vote rule because of the valid petition presented.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2003-62: (Second Reading/Public Hearing) 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. (First Reading - 8/12/03)

Mr. Gougelman read Ordinance No. 2003-62 by title. There were no comments from the audience.

Moved by Poole/E. Palmer for approval of Ordinance No. 2003-62. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2003-65 RELATING TO CHAPTER 30 OF THE CITY CODE, ENTITLED TAXATION: (Second Reading/Public Hearing) 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. (First Reading - 8/12/03)

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

Moved by Hand/Walker for approval of Ordinance No. 2003-65.

Mr. Palmer asked the definition of “prior” as it is used in the ordinance. Attorney Gougelman said that it means you cannot have taken objective action to relocate into the City and then make application for an exemption. However, the ultimate arbiter is going to be the City Council.

The question was called. The roll call vote was:

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

Nay: None

Motion carried unanimously.

13. ORDINANCE NO. 2003-66: (Second Reading/Public Hearing) An ordinance amending Chapter 23, Retirement and Pensions, Article V, Firefighters’ Pension Plan by providing an additional supplemental monthly benefit effective October 1, 2003. (First Reading - 8/12/03)

Mr. Gougelman read Ordinance No. 2003-66 by title. There were no public comments.

Moved by Poole/E. Palmer for approval of Ordinance No. 2003-66. The roll call vote was:

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

Nay: None

Motion carried unanimously.

14. COUNCIL ACTION RE: Request by Council Member Ed Palmer for discussion of the Internal Auditor position. (Postponed August 12, 2003)

Mr. Palmer stated that he would like to discuss the position of Internal Auditor, including the role, responsibilities, assignments, reporting procedures, types of reports and timing of reports.

He referenced the following to support his discussion: He submitted 38 questions regarding Fleet Management operations to staff and copied Council (referred to as the “2003 report”); the 2003 report was a follow on to the 1998 report on Fleet operations; the 1998 report indicated that there was a lack of standard operating procedures in Fleet Management; the 2003 report had three phases and many of the 38 questions had

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multiple parts; the external auditors indicated that they did not have the time to answer the questions and that it would be too expensive; the City Manager assigned the 2003 report to the Internal Auditor; City management should have realized this was an extensive undertaking, yet no help was offered to the Internal Auditor; and the 2003 report on Fleet operations prepared by Finance, which addresses questions 16 – 38, has glowing errors.

Mr. Palmer elaborated on the discrepancies between the report prepared by the Internal Auditor and the report prepared by the Finance Department.

He noted that the 2003 report prepared by the Internal Auditor indicates that there are still no standard operating procedures controlling Fleet operations. Following a brief discussion, he pointed out that, as a result of the Internal Auditor's report, the City has changed the way it reports/records oil changes and has established criteria on how to dispose of vehicles.

In response to Mr. Palmer, Mr. Schluckebier reported that Mr. Frink indicated his intent to retire in January 2005. That is why the comment was placed in the preliminary budget regarding the Internal Auditor position. There was no effort to delete the position or to place Mr. Frink in harm's way.

Mr. Palmer briefly discussed the disposal of tires, oil changes, cost of labor, number of vehicles disposed versus number of vehicles purchased, frequency of tire changes, audit or franchise fees, cost recovery for land sold and savings on telephone costs. He stated that internal audits are a tool of management. They cause change, save taxpayer dollars, improve conditions and reveal unsatisfactory conditions. In order for Council to have unfiltered reports, he recommended the Internal Auditor position be in the same line as the City Manager and City Attorney and report to the City Council.

Mr. Palmer's motion – "that we transfer the position of Internal Auditor and control from the Assistant City Manager and move the control to City Council" – did not receive a second.

Mr. Palmer concluded by saying that Council must have timely and accurate reports; undue influence or conduct while an audit is being conducted must be eliminated.

Mrs. Poole said she does not believe City Council should be involved. She added that she believes this is a personnel problem. Mrs. Poole stated that it is up to the City Manager to decide when and what we audit.

Mrs. Hand said that the City Manager's role is to give direction to the employees. It should be his decision whether we maintain a position. She noted that she does not feel that she has the expertise to supervise an employee. And, it is not Council's role to do this.

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Mrs. Palmer said that this issue has become personal and a power contest. She added that she does not believe that the audits that have been performed have received respect. The report prepared by the Assistant City Manager addresses or explains some of the issues; however, it is the function of the Internal Auditor to determine where the money is going and how much we are charging/paying.

Continuing, Mrs. Palmer asked if the Internal Auditor's recommendations were wrong, then why have we implemented the criteria for disposing of automobiles and changed the way oil change costs are recorded. She stated that she will defend the position of Internal Auditor. And, as a Council Member who approves the budget and sets policy, she would like to see the Internal Auditor reports.

Mr. Palmer asked the City Attorney to comment on how this action would affect the Charter. Attorney Gougelman said this is a Charter issue. Under Florida law, Council has the authority to abolish a department. However, this issue relates to transferring a Charter position from one area of authority to another. This would require an ordinance and then a referendum vote. Following further discussion, Mr. Gougelman agreed to investigate whether a referendum would absolutely be required.

Mrs. Walker said if we have not dealt with issues revealed during the 1998 Fleet report, then we have not done our duty. She added that she was under the impression that the external auditor reviewed the house auditor. She stated that something needs to be done in a different manner.

Mr. Contreras informed Council that he is a certified auditor for Northrop Grumman. His work is governed by policies and procedures; they are the rules of engagement. The fundamental premise of an auditor is his/her charter. He added that the City Charter is a well-defined chain of command and any violation of that chain leads to disruption of good order and discipline.

Continuing, Mr. Contreras said the City Manager or Assistant City Manager – people in a responsible position – must run guidance and oversight over the internal audit function. A report should never be released without the concurrence of management involved. This is a blatant violation of conducting audits.

Mr. Contreras suggested the City consider a two year review of procedures that are in place. Additionally, he said perhaps a consultant, someone from outside the organization, should look at what is happening. This would remove the "he said/she said" comments and vendetta activities. Mr. Contreras cautioned that this issue has gotten personal; comments can damage careers, families and reputations.

Mrs. Poole stressed that the person who handles the budget and the Finance Director must review the information obtained by the Internal Auditor. If the Internal Auditor is told to recheck the work, then it shouldn't be taken personally, that is the process.

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Mrs. Poole said she does not wish to review the Internal Auditor's reports. She said that she has faith in what the City Manager is doing.

Mayor Buckley asked the City Manager to review the matter and return to Council with recommendations.

Mr. Schluckebier said that he vehemently objects to restructuring the City Charter with regard to the Internal Auditor position. He added that he stands by the comments made, which are in the (August 12) minutes. And, he stands behind the veracity of the report prepared by the Finance Department.

Recessed: 9:13 p.m.  
Reconvened: 9:24 p.m.

NEW BUSINESS

15. ORDINANCE NO. 2003-68 (A&V #267): (First Reading/Public Hearing) An ordinance to abandon and vacate the rear lot line easement at 1975 Blue Ridge Avenue.

Attorney Gougelman read Ordinance No. 2003-68 by title. There were no disclosures by Council and no comments from the public.

Moved by Walker/E. Palmer for approval of Ordinance No. 2003-68. Motion carried unanimously.

16. CONSENT AGENDA:

Moved by E. Palmer/Hand for approval of 16 "a" through "c" as recommended.

Mrs. Palmer asked that item "c" be removed from the consent agenda so that it can be voted on separately. She said that last year when the request came in it was reported that the City had already complied with the conservation and public awareness campaign through our in-house effort.

Mrs. Poole said that this is a good expenditure. She added that we need to continue participating because we work closely with St. Johns. Mrs. Palmer recommended that we discontinue the in-house effort if it will be Council's decision to participate in this campaign every year. Mayor Buckley pointed out that they requested \$31,500 and the recommendation is to provide \$7,000.

Following a brief discussion, Mr. Schluckebier confirmed that because the City has demonstrated a high regard for water conservation and our rates are conservation oriented, St. Johns issued the City a long term consumptive use permit.

Mrs. Palmer agreed that our conservation effort has been very effective – so effective that low consumption was cited as a reason for a water rate increase. She questioned if

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the long term use permit is the result of this contribution. Mr. Schluckebier replied no. Mrs. Palmer repeated that we should either contribute to the St. Johns campaign or have our in house campaign.

Mayor Buckley stated that it is in our best interest to give St. Johns \$7,000. Mr. Palmer agreed and said that figure is peanuts when compared to the overall benefit the City receives from its tremendous relationship with SJRWMD.

Moved by E. Palmer/Poole to amend the motion to consider items “a” and “b” only and vote on “c” separately. Motion carried unanimously.

Mr. Contreras said we have established that our internal program meets the requirements. He agreed that this is duplication and said he can't support the funding.

The question was called on the main motion as amended, which includes item “c” only. The roll call vote was:

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

Nay: C. Palmer and Contreras

Motion carried.

The consent agenda was approved as follows:

- a. Purchase/installation of 10,000 square feet of 10 inch grout-filled fabric formed revetment and 4 ounce underlayment fabric, Terra Firma Environmental, Inc., Brookville, FL - \$33,700.
  - b. Purchase of four laser speed measuring devices, with chargers, carrying cases, and extended warranties, Kustom Signals, Inc., Lenexa, Kansas - \$16,578.
  - c. Request from St. John's River Water Management District for funding participation in the 2004 Water Conservation Public Awareness Campaign - \$7,000.
17. COUNCIL ACTION RE: Request by Abilities, Inc. of Florida for \$45,000 in HOME Rental Rehabilitation Funds for renovation of nine units located in San Juan Village Garden Apartments at 100 San Juan Circle.

Mrs. Thomas reviewed the agenda report.

Lori Kreisle, Clearwater and John Hazelroth, Maitland, representing Abilities, Inc., were present.

Ms. Kreisle confirmed for Mr. Palmer that units will be rented to very low income – 30% of the median family income. Their average client lives on Social Security Income and the

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rent is calculated at 30% of their adjusted income. Additionally, she responded to general questions regarding Abilities, Inc. and the proposed renovation of the apartments.

Moved by E. Palmer/Hand for approval of an award of \$45,000 in HOME Rental Rehabilitation Funds to Abilities, Inc. of Florida for the rehabilitation of the nine units located in San Juan Village Garden Apartments. Motion carried unanimously.

Moved by E. Palmer/Hand to authorize the City Manager to execute an agreement with Abilities, Inc. of Florida for the implementation of the project. Motion carried unanimously.

18. COUNCIL ACTION RE: Request by Community Housing Initiative, Inc. for \$168,750 in HOME CHDO Funds for implementation of a Homebuyer Infill Housing Project.

Mrs. Thomas briefed Council on the project.

Nicole Tenpenny, Executive Director, Community Housing Initiative, Inc., was present and responded to general questions regarding the project.

Moved by Hand/Walker for approval of an award of \$168,750 in HOME CHDO funds to Community Housing Initiative, Inc. for the implementation of the Homebuyer Infill Housing Project, approval of the proposed budget adjustment, and authorization for the City Manager to execute an agreement with CHI for said project. Motion carried unanimously.

19. PRELIMINARY PLAT APPROVAL (SD-2003-03) LAKE WASHINGTON BUSINESS CENTER: (Public Hearing) A request for preliminary plat approval for Lake Washington Business Center on a 10.316-acre parcel, zoned M-2 (General Industrial), located on the east side of Wickham Road, south of Lake Washington Road, and north of Electronics Drive. (Owner/Applicant - Victor Osman, Trustee of the Victor Osman Revocable Trust) (Representative - Philip Nohrr) (P& Z Board - 08/07/03)

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of SD-2003-03, Preliminary Plat for "Lake Washington Business Center," with the following conditions:

- a. Any change to the preliminary plat will require its reevaluation by the Planning and Economic Development Department and Engineering Department.

Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the Preliminary Plat includes, but is not limited to: 1) an increase of more than 1 lot.

- b. The 20-foot wide, rear lot drainage easements must comply with the requirements of Chapter 29, Section 29-6 (b) and the Plat Note #5 must reflect that the property

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owners' association shall be responsible for the maintenance of all storm sewer pipes which convey runoff from the curb inlets to the retention ponds. Depending on the design of the drainage structure within the easements, such easements may be required to be platted as a tract, as determined by the City Engineering Department, per City Code, Chapter 29, Section 29-6 (b) (9).

Staff recommended approval based on the conditions recommended by the Planning and zoning Board and the following stipulation "c":

- c. The preliminary plat shall be modified to provide a street connection from Tradeport Drive to Hughes Road, per Chapter 29, Section 29-6 (b) (1).

Mrs. Poole asked who would be responsible for ensuring that the property owners maintain the drainage areas. Mrs. Dittmer replied City Code Enforcement.

Mrs. Dittmer confirmed for the Mayor that the property is zoned M-2, which would not permit residential uses.

Mrs. Walker asked where the lots will drain. Mrs. Dittmer explained that during engineering plan review, the applicant will explore whether they want open swales or piping and whether runoff will go towards the front or the rear. Mrs. Walker stated that swales do not work.

There were no disclosures by Council. Mayor Buckley opened the public hearing.

Phil Nohrr, attorney representing the applicant, distributed information showing photographs of the proposed business center, an aerial view and a series of photos showing the property to the south. He reported that they plan to develop a high scale business park with controlled access from Wickham Road. If they are required to connect Hughes Road, it will run contrary to what they are trying to accomplish. Hughes Road is a road that goes nowhere and serves no purpose.

Mr. Nohrr referenced the photographs of the property to the south, which depict accumulated junk, vehicles, debris, etc. He said if the Hughes Road connection is made, their property will be associated with the "junk" property.

Regarding the drainage discussion, Mr. Nohrr said they do not intend to construct open swales. He added that it is too early in the process to identify the drainage configuration.

Mr. Nohrr concluded by saying this is an approximate \$10 million project. It will be high quality and will upgrade the neighborhood. He stressed that the road connection is not needed and will not be needed. It will not enhance their project and will detract from their development. Additionally, the Planning and Zoning Board moved for approval without requiring the road right-of-way.

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Mrs. Hand asked if the “junk” property is in the City and Mrs. Dittmer replied yes. Mrs. Hand questioned why we allow property like this in the City. Mr. Nohrr said their intent is to stay as far away from that property as they can.

Mrs. Palmer referenced the renderings of the proposed development. She said the buildings look like retail stores and business offices. Mr. Nohrr said that it is called flex space. Each building will support warehousing/storage, and there will be room in the front to display products. The market will dictate what the user wants; however, they will comply with the zoning requirements.

Mrs. Palmer asked how they feel about one entrance/exit with regard to an emergency situation. Mr. Nohrr said that the cul-de-sac meets the standards; vehicles will be able to turn around.

Mr. Palmer asked the staff rationale for requiring the road to be extended. Mrs. Dittmer said that the City Code, Chapter 29, requires a plat like this to connect to any adjacent streets. Mr. Palmer asked how the extension would adversely impact the applicant. Mrs. Dittmer said that the applicant has indicated that the connection would tie them into a portion of the City (property to the south) that they would rather not be connected with. Mayor Buckley added that it will connect the property to a bunch of junkyards.

Mr. Nohrr stressed that they want to disassociate their property from the property to the south. Additionally, the need for the road has not been demonstrated; access will not be denied on either side. The right-of-way goes nowhere and doesn’t serve a purpose.

Attorney Gougelman explained that the applicant is requesting approval (which includes stipulations “a” and “b”) of the plat and approval of a variance so they don’t have to make the street connection.

Moved by Buckley/C. Palmer for approval of the preliminary plat subject to the stipulations proposed by the Planning and Zoning Board (“a” and “b”) and approval of a variance to not require the street connection between Tradeport Drive and Hughes Road.

Mrs. Palmer said she supports this because of the surrounding area and the fact that she does not see Hughes Road going any farther. If it did, it would connect with Lansing.

The question was called. Motion carried unanimously.

20. COUNCIL ACTION RE: Request by Boruch-David, Inc. on behalf of Mercedes Homes for four off-premise directional signs to be placed along the north side of Pirate Lane.

Mrs. Dittmer briefed Council. The Planning and Economic Development Department and the Code Compliance Division recommended approval of the request for an off-premise sign with the following conditions:

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- a. Only one off-premise sign shall be permitted and the location of the sign shall be one of the four locations identified on the map of Exhibit 'A' (located in the agenda package).
- b. The applicant must obtain a permit to construct the sign including complying with all Code requirements related to size, setback, height and other design provisions of the Code.
- c. The off-premise sign shall be permitted for a maximum of three years from the date of final plat approval of the last phase of the subdivision.
- d. The off-premise sign shall not be transferred for use by other property owners or business operators unless approved by City Council.
- e. The sign shall not be considered a temporary real estate sign under the provisions of Chapter 25, Section 25-18 (10).

Moved by Hand/E. Palmer for approval of one off-premise sign subject to the proposed conditions. Motion carried unanimously.

21. ORDINANCE NO. 2003-69 (CPA-2003-05) AND ORDINANCE NO. 2003-70 (Z-2003-957): Ordinances amending the land use and changing the zoning on 1.46± acres located adjacent and to the south of the developed Walgreen's building that lies on the southwest corner of Paradise Boulevard and Highway A1A. (Owner - Olympia Development Group, Inc.) (Applicant/Representative - William Honner & Sydney Pump) (P& Z Board - 08/07/03)

- a. Ordinance No. 2003-69 (CPA-2003-05): (First Reading/Public Hearing) An ordinance changing the land use from Commercial to Mixed Use Commercial/Medium Density Residential.
- b. Ordinance No. 2003-70 (Z-2003-957): (First Reading/Public Hearing) An ordinance changing the zoning from C-P (Commercial Parkway) to R-2 (10) (One-, Two-, and Multiple-Family Residential with a cap of 10 units per acre).

Attorney Gougelman read the ordinances by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval.

Mrs. Poole asked why we are recommending a change in zoning from C-P to R-2 on Highway A1A. Mrs. Dittmer said that the applicant saw that zoning as the highest and best use of the property. The property doesn't seem likely for commercial development.

There were no disclosures from City Council.

William Honner and Sydney Pump, applicants, were present. Mr. Honner said they believe this is a nice site for a condominium project. In their opinion, the condominium

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market is better than the retail/office market. Mr. Pump added that there are condominiums adjacent to this property on the south side.

Moved by Hand/Contreras for approval of Ordinance No. 2003-69. Motion carried. Mrs. Poole voted nay.

Moved by Walker/C. Palmer for approval of Ordinance No. 2003-70. Motion carried. Mrs. Poole voted nay.

Mrs. Poole said she voted nay because too many units are planned for this site.

22. ORDINANCE NO. 2003-71 (CPA-2003-02) AND ORDINANCE NO. 2003-72 (Z-2003-962) EAGLE HARBOR: Ordinances amending the land use on 8.9 acres and changing the zoning on 8.9 acres and an adjacent 15.5±-acre parcel located on the west (north) side of Eau Gallie Boulevard, east of Trent House Drive, west of Wickham Road, and the proposed Turtle Mound Road extension. (Owner/Applicant - Florida Conference Association of Seventh Day Adventist) (Representative - Mike Evans) (P& Z Board - 08/07/03)

- a. Ordinance No. 2003-71 (CPA-2003-02): (First Reading/Public Hearing) An ordinance changing the land use from Commercial to Low Density Residential.
- b. Ordinance No. 2003-72 (Z-2003-962): (First Reading/Public Hearing) An ordinance changing the zoning from C-P (Commercial Parkway) to R-2 (6) (One-, Two-, and Multiple-Family Residential with a cap of 6 units per acre).

Attorney Gougelman read Ordinance No. 2003-71 and No. Ordinance No. 2003-72 by title.

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of the Comprehensive Plan Amendment and the rezoning, subject to the following conditions:

- a. Provide a warranty deed for the east 25 feet of the parcel overlaying the FDOT drainage easement for additional right-of-way for the proposed Turtle Mound Road extension.
- b. The 67-foot wide drainage right-of-way to the north of the property will not be used for ingress or egress for development proposed on the property.
- c. A 10-foot wide drainage tract must be provided along the western property line for proposed lots and the tract must be maintained by the homeowners association and/or comply with Engineering Department comments.
- d. Provide a note on the plat indicating that the homeowners association will maintain private drainage easements.

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There were no disclosures from Council.

Mike Evans, 1682 West Hibiscus Boulevard, representing the applicant, said that this development backs up to Magnolia Lakes and there is additional residential on the north side. He noted that it will be a better use of the property to have residential in the back and commercial in the front. Regarding stipulation “c”, he said they have added Tract C for drainage, which will drain to the north. A buffer will be provided between Magnolia Lakes. These changes result in the number of lots decreasing to 72.

Mr. Evans referenced the opposition from residents in Magnolia Lakes and said their main concern relates to buffering. He noted that the proposed development is less than three units per acre, and at the next Council meeting they will have a preliminary plat and binding site plan.

Mr. Evans submitted two documents – one entitled “Eagle Harbor Backyard Berm Detail” and the other “Eagle Harbor LLC.” The berm detail depicts the height of the berm and size of the easement proposed between Eagle Harbor and the adjacent Magnolia Lakes Subdivision. The second document outlines conditions agreed to by the developer. Conditions include the berm, fence, landscaping and landscape easement.

Continuing, Mr. Evans said that they will also provide the following for the Magnolia Lakes residents: During construction if residents experience problems with dirt in their pools, he will hire someone to clean the pools; they will erect a silt fence; will clean the backs of houses; and will pot and replant the Magnolia Lakes homeowners’ plants, which have been planted on the Eagle Harbor property.

Mayor Buckley asked Mr. Evans if he agreed with the stipulations. Mr. Evans said yes; however, the stipulation regarding the drainage tract is no longer necessary.

Mrs. Palmer asked how the proposed homes will compare with the homes in Magnolia Lakes. Mr. Evans said that these will be larger homes in a gated community. They have one entrance; however, they will provide the stub out.

Mrs. Palmer asked Mr. Gougelman if the document outlining certain conditions is legal and binding. Attorney Gougelman said he believes that it is an agreement between the developer and the adjacent property owners.

Mrs. Poole said that all the trees will have to be removed because of the amount of fill required. Mr. Evans said that the trees have to be removed in order for the site to be raised.

Frank McMillan, attorney representing the Florida Conference Association of Seventh Day Adventist, owner/applicant, discussed the history and ownership of the property. He explained that they were not successful in marketing the property for commercial development. He encouraged Council to support the application and request.

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Marshall Potter, 1159 White Oak Circle, said that the residents in Magnolia Lakes started a petition in order to preserve the dignity and privacy of the community. In the past the community has been “violated” by adjacent development. With the proposed development, the Magnolia Lakes residents’ concerns have been heard and addressed. The developer, Mike Evans, has given every assurance that he will work with Magnolia Lakes. Mr. Potter referenced and elaborated on what they have agreed to.

A brief discussion followed regarding the Peachtree Subdivision development.

Ronna Seiser, 1157 White Oak Circle, confirmed that the Magnolia Lakes residents’ concerns about the Peachtree development related to debris and buffering. She added that Eagle Harbor will protect them visually and provide buffer.

Moved by Hand/Contreras for approval of Ordinance No. 2003-71.

Mrs. Palmer asked Attorney Gougelman to address the stipulations. Mr. Gougelman said that the agreement between the homeowners and the Eagle Harbor LLC should possibly be memorialized as conditions in the zoning ordinance. If that is the desire of Council, the wording can be refined and inserted at second reading. Mr. Evans agreed. Mrs. Palmer asked that buffering during the land clearing process be specifically addressed.

Mrs. Poole stated that although this development will have less impact on the schools, it will have a greater impact on fire, police and other services. It also results in a loss of natural habitat. She expressed concern with the City continually changing the Comprehensive Plan and zoning in order to accommodate developers.

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

Moved by Hand/E. Palmer for approval of Ordinance No. 2003-72, which includes the change in conditions (to be returned at second reading). Motion carried. Mrs. Poole voted nay.

23. ORDINANCE NO. 2003-73 (CU-2003-08) AND SITE PLAN APPROVAL (SP-2003-18) AURORA MINI STORAGE: (First Reading/Public Hearing) An ordinance granting a change to CU-1999-05 (Ordinance No. 99-21) which allowed a conditional use for a mini-storage in the C-1 (Neighborhood Commercial) zoning district and site plan approval on a 3.35-acre parcel located on the north side of Aurora Road, west of Croton Road, and east of Wickham Road. (Owner/Applicant - Boozer Properties, LLC) (Representative - Vaheed Teimouri) (P& Z Board - 08/07/03)

Mr. Gougelman read the ordinance by title.

Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of CU-2003-08, amending Section 2 of Ordinance No. 99-21, as follows:

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- a. The conditional use shall be consistent with the site plan for Aurora Storage Facility, consisting of a one-page plan dated 7/25/03, with Drawing Number 2002-143, prepared by Teimouri & Associates, Inc., of Melbourne, Florida (SP-2003-18).

Any change to the site plan will require reevaluation of the site plan by the City Engineering and Planning and Economic Development Departments.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency and City Council. A substantial change includes but is not limited to: 1) a decrease of 5% or more of open space or vegetative areas on the site; 2) any increase in the number of access points as shown on the site plan; and 3) a 10% or more increase in the building size.

- b. Proposals to use portions of the building or redevelop the site for different permitted uses listed in the C-1 zoning district must ensure that adequate parking is available or provided to accommodate the proposed use. No occupational or business license will be issued for the buildings until determined by the City that sufficient parking will be provided, and that the proposed use is consistent with the requirements of C-1 (Neighborhood Commercial) district.

Additionally, staff recommended deleting conditions “c”, “e” and “g” and adding the following additional stipulation: “Construction of buildings must be substantially in accordance with the rendering provided by the applicant titled, Boozer Properties, LLC and attached to the ordinance.”

There were no disclosures by Council.

Vaheed Teimouri, representing the applicant, was present.

Mrs. Poole asked if trees will be planted. Mr. Teimouri said there will be quite a bit of landscaping. The new plan opened up opportunities for interior landscaping.

Mrs. Palmer noted that this site will have wet detention. She asked the difference between retention and detention and how mosquitoes are controlled.

Mr. Teimouri said that a retention area holds the water until it percolates. A detention area holds and releases the water slowly. A wet retention area is far better than a dry system because a dry system doesn't work when it rains every day. Fish, frogs, etc. in wet systems eat the mosquito larvae.

Mr. Teimouri agreed with the stipulations.

Moved by E. Palmer/Poole for approval of Ordinance 2003-73. Motion carried unanimously.

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24. ORDINANCE NO. 2003-74 (Z-2003-961AD/FOC-2003-07/LDR-2003-07) BUILDING CODE: (First Reading/Public Hearing) An ordinance amending Chapters 13 and 25, updating all references to the Florida Building Code, amending references to wind speed zones, adopting the 2000 edition of the International Property Maintenance Code, adopting the 2002 National Electrical Code, and making changes related to land clearing and top soil stripping.

Attorney Gougelman read Ordinance No. 2003-74 by title.

Moved by Poole/E. Palmer for approval of Ordinance No. 2003-74. Motion carried unanimously.

25. COUNCIL ACTION RE: Board Appointments

- a. Architectural Review Board - appointment of one regular member

Mrs. Palmer nominated Shanna Tibbetts. Moved by Contreras/Hand to close the nominations. Motion carried unanimously. Moved by Poole/Contreras to appoint Shanna Tibbetts. Motion carried unanimously. (8/26/2003 – 9/30/2004, unexpired three-year term)

- b. Code Enforcement Board - appointment of \*three regular members

\*John Fadden resigned August 26; therefore, the appointment is for four regular members.

Mayor Buckley called for nominations for Lorna King's seat. Moved by C. Palmer/Hand to reappoint Lorna King. Motion carried unanimously. (10/15/2003 – 10/14/2006)

Mayor Buckley called for nominations for Kathleen Rosenberg's seat. Moved by Poole/E. Palmer to reappoint Kathleen Rosenberg. Motion carried unanimously. (10/15/2003 – 10/14/2006)

Mayor Buckley called for nominations for Bruce Mochwart's seat. Moved by Walker/Contreras to reappoint Bruce Mochwart. Motion carried unanimously. (8/28/2003 – 8/27/2006)

Mayor Buckley called for nominations for John Fadden's seat. He noted that this position calls for a business person. Mrs. Poole nominated Donald Cook and Mrs. Walker nominated Glenn Morris. Moved by E. Palmer/Contreras to close the nominations. Motion carried unanimously. The roll call vote was:

Cook: E. Palmer, Poole, C. Palmer, Hand and Buckley

Morris: Walker and Contreras

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Appointed: Donald Cook (8/26/2003 – 10/14/2005, unexpired three-year term)

- c. Firefighters' Pension Plan Board of Trustees - confirmation of appointment of fifth member

Moved by E. Palmer/Contreras to confirm the appointment of Tom Flamm as the fifth member. Motion carried unanimously. (8/26/2003 – 6/9/2005, unexpired two-year term)

- d. Historic Preservation Advisory Committee - appointment of \*one member

\*Weona Cleveland resigned August 25; therefore, the appointment is for two members.

Mrs. Poole noted that the two vacancies are for seats that were originally appointed by her and Mrs. Palmer. City Council had no objection to Council Members Poole and C. Palmer making these appointments. Mrs. Poole appointed Ed Bradford and Mrs. Palmer appointed Karen Raley.

Moved by Walker/Contreras to appoint Ed Bradford and Karen Raley. Motion carried unanimously.

26. COUNCIL ACTION RE: Funding request from Brevard Tomorrow.

Mayor Buckley announced that the applicant requested this item be postponed until the September 23 Council meeting.

27. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mr. Schluckebier reported on the following items:

- Brevard County's sales tax project list has been distributed to Council. The City is currently working with the County to schedule group presentations. A list of groups and organizations interested in receiving information is being compiled and will be distributed to Council. City Council was encouraged to play an active role in participating in the group presentations.
- The Mayor, Council Member Ed Palmer, the City Manager and the Utilities/Public Works Director attended an Army Corps of Engineer meeting regarding the dredging of Lakes Sawgrass and Hell 'N Blazes. Although City staff does not know what level of resources the County intends to devote, City staff will return to City Council with a recommendation package at the September 9 meeting.

A brief discussion occurred regarding funding that can be reprogrammed from future projects. Several Council Members asked that other cities in our area be notified about the importance of this project and a need for financial assistance.

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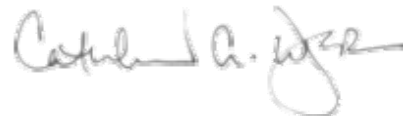
Mrs. Hand read an e-mail from Kimley Horn regarding the proposed traffic signal at Wickham Road and the Dog Track. On August 19, Kimley Horn was informed that the proposed signal design does not meet the new FPL windload requirements; therefore, the signal has to be redesigned. Once a solution is identified, the plans will be resubmitted to Brevard County. The City Manager confirmed for Mrs. Hand that he will contact Brevard County Commissioner Jackie Colon regarding this issue.

Mrs. Poole stated that Bob Gross and Weona Cleveland resigned from the Historical Advisory Committee because they felt that Council's vote on the Causeway Center item showed that the City has no interest in historic preservation.

28. ADJOURNMENT

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

The meeting adjourned at 12:04 a.m.



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City Clerk – 9/4/2003

Approved by Council September 9, 2003