

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
SEPTEMBER 9, 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. Pastor Ronald Green, Higher Praise Family Worship Center, 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	Planning & Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley presented the following proclamations:

“Constitution Week,” September 17-23, 2003; accepted by Jeanne Roach, Regent, Abigail Wright Chamberlin Chapter of the Daughters of the American Revolution.

“Fire Prevention Week,” October 5-11, 2003; accepted by Jim Carey, Deputy Fire Official, City of Melbourne.

Additionally, Mayor Buckley presented the July 2003 Beautification Award to Kevin Evans, Area President, Indian River National Bank, 3000 Sarno Road.

5. APPROVAL OF MINUTES – August 26, 2003 Regular Meeting

Moved by Contreras/Hand for approval of the August 26, 2003 minutes.

Council Member Poole referenced the August 26 minutes – Approval of Minutes – where Mrs. Hand indicated that “Mrs. Poole has changed her vote on many items over the years.”

Mrs. Poole stated that she reviewed the minutes for the past three years and found where she changed her vote only once. And, that was an instance where she voted

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incorrectly because of confusion on the ranking or scoring. She asked Mrs. Hand to retract that statement from the August 26 minutes. Council Member Hand stated that she has no intention of taking back that statement.

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

6. CITY MANAGER'S REPORT

City Manager Jack Schluckebier announced that Cindy Dittmer has been appointed Planning and Economic Development Director.

Additionally, he noted that President Bush has issued a proclamation requesting government agencies to fly the American flag at half-mast on Thursday, September 11.

7. PUBLIC COMMENTS

Susan Miller, 509 Palmetto Avenue, stated that her neighborhood has experienced a number of burglaries since the fence, located at the rear of the Florida Eye Associates property, was removed. (Florida Eye located on New Haven Avenue; rear of building faces Strawbridge Avenue and off-site parking lot located on north side of Strawbridge Avenue). She added that representatives from Florida Eye have not been responsive.

Mrs. Poole said when she was informed about this, she immediately reported the matter to staff. Mr. Schluckebier said that Code Compliance is handling the matter. He added that he would inform Ms. Miller about the status within the next few business days.

Edward Cole, 513 Palmetto Avenue, discussed the same issue and said that his property was burglarized.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2003-68 (A&V #267): (Second Reading/Public Hearing) An ordinance to abandon and vacate the rear lot line easement at 1975 Blue Ridge Avenue. (First Reading - 8/26/03)

Attorney Gougelman read Ordinance No. 2003-68 by title. No disclosures by Council/no public comments.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2003-68. The roll call vote was:

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

Nay: None

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Motion carried unanimously.

9. 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)
- a. Ordinance No. 2003-69 (CPA-2003-05): (Second Reading/Public Hearing) An ordinance changing the land use from Commercial to mixed use Commercial/Medium Density Residential. (First Reading - 8/26/03)
- b. Ordinance No. 2003-70 (Z-2003-957): (Second 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). (First Reading - 8/26/03)

Mr. Gougelman read both ordinances by title. There were no disclosures by Council and no public comments.

Moved by Hand/Walker for approval of Ordinance No. 2003-69. The roll call vote was:

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

Nay: Poole

Motion carried.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2003-70. The roll call vote was:

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

Nay: Poole

Motion carried.

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

10. ORDINANCE NO. 2003-71 (CPA-2003-02), ORDINANCE NO. 2003-72 (Z-2003-962), AND PRELIMINARY PLAT APPROVAL (SD-2003-04) 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, and preliminary plat approval on a total of 24.4+ acres, located on the west (north) side of Eau Gallie Boulevard, east of Trent House Drive,

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west of Wickham Road, and the proposed Turtle Mound Road extension. (Owner/Applicant - Florida Conference Association of Seventh Day Adventist) (Representative - Mike Evans)

- a. Ordinance No. 2003-71 (CPA-2003-02): (Second Reading/Public Hearing) An ordinance changing the land use from Commercial to Low Density Residential. (First Reading - 8/26/03)
- b. Ordinance No. 2003-72 (Z-2003-962): (Second 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). (First Reading - 8/26/03)
- c. Preliminary Plat Approval: (Public Hearing) Preliminary Plat approval to develop the properties for single-family residential use.

Mr. Gougelman read Ordinance Nos. 2003-71 and 2003-72 by title. There were no disclosures by Council.

Mike Evans, 1682 West Hibiscus Boulevard, representing the applicant, discussed the conditions in Ordinance No. 2003-72, which were changed as a result of the last meeting. He noted the following:

- Condition “c” – no longer necessary because they plan on installing a berm with a fence.
- Condition “e.3.” – change “...construction of any of Lots 13-18...” to “...construction of any homes...”
- Condition “e.4.” – trees cannot be planted until homes are constructed on the lots because of the irrigation system. The berms will be irrigated through the lots rather than a separate irrigation system.
- Condition “e.4.” – if owners of Lots 57-64 in Magnolia Lakes request landscaping on the west side of the fence, they would provide that while equipment is on site rather than waiting until conveyance of two-thirds of the Eagle Harbor lots.
- Condition “g” – temporary natural buffer can’t be completed before Lots 13-18 cleared. They will need to build the lakes and use the fill for the lots. They plan to clear at one time and erect a silt fence on the Magnolia Lakes lots for protection during construction. The fence and berm will be installed prior to issuance of a certificate of occupancy.

Attorney Gougelman said he does not know if these changes are acceptable to the Magnolia Lakes homeowners. Council Member Cheryl Palmer said that the berm and vegetation were supposed to block the dust from construction. Mayor Buckley

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referenced the correspondence received from Peter Greco, White Oak Circle (Magnolia Lakes), expressing concern about construction dust and debris in the Magnolia Lakes homeowners' pools. Mr. Evans stated that he has agreed to have the pools professionally cleaned.

Attorney Gougelman said that condition "g" was a request by Council at the last meeting. It was not included in the stipulations that Mr. Evans worked out with the Magnolia Lakes homeowners.

Mrs. Walker asked for clarification. Mr. Evans said the berm would be built as the lots are filled. Building the berm prior to having the lots filled would present a logistical problem.

Moved by Buckley/Poole to postpone this item for two weeks (until September 23) to allow time for the changes to be reviewed.

Mr. Evans confirmed for Mrs. Poole that he will have the pools cleaned as often as needed. Mrs. Poole said that needs to be a stipulation so that the pools are not just cleaned once following construction.

The question was called. Motion carried unanimously.

11. ORDINANCE NO. 2003-73 (CU-2003-08) AND SITE PLAN APPROVAL (SP-2003-18) AURORA MINI STORAGE: (Second 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) (First Reading - 8/26/03)

Attorney Gougelman read Ordinance No. 2003-73 by title. No disclosures by Council/no comments from the audience.

Moved by Poole/C. Palmer for approval of Ordinance No. 2003-73. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2003-74 (Z-2003-961AD/FOC-2003-07/LDR-2003-07) BUILDING CODE: (Second 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

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Code, adopting the 2002 National Electrical Code, and making changes related to land clearing and top soil stripping. (First Reading - 8/26/03)

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

Moved by Hand/E. Palmer for approval of Ordinance No. 2003-74.

Mrs. Walker asked why the land clearing and top soil stripping requirements are being repealed from Appendix B. City Clerk Cathy Wysor explained that the land clearing and top soil provisions in Appendix B conflict with the more stringent regulations recently adopted by Council as a part of the vegetation code (included in Appendix D of the City Code).

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.

NEW BUSINESS

13. CONSENT AGENDA:

Moved by Hand/Contreras for approval of 13 “a” through “i” as recommended.

Mr. Schluckebier responded to questions regarding “h” and “i”. The items were not removed from the consent agenda. Regarding Item “i”, staff will provide Council Member Ed Palmer additional information regarding the Fleet Management parts inventory and fuel inventory.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Approval of Change Order No. 1 to CH2M Hill’s Amendment No. 1, Task Order No. 4, Automatic Transfer Switch Installation, Lake Washington SWTP Improvements, Phase 2, Project C0303 and budget transfer of \$6,430 from Water & Sewer Miscellaneous Projects to this project budget.
- b. Amendment No. 5 to the agreement with Hazen and Sawyer for the D. B. Lee Waste Water Treatment Plant Operating Permit Renewal Application - \$37,480.
- c. Purchase of a Detroit 150DSEGB standby electric generator, Florida Detroit Diesel, Orlando, FL - \$24,000.

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- d. Purchase of two submersible 6” pumps, motors, and related equipment, Ellis K. Phelps & Company, Apopka, FL - \$36,400.
- e. Purchase of two 4” Samson stainless steel globe valve/Auma actuator assemblies, Diller-Brown & Associates, Inc., Winter Park, FL - \$25,451.48.
- f. Purchase of 10 Model 5081-C-HT-21-60 conductivity display/transmitters, 10 Model 140-56 conductivity probes, and 300-feet of 9-conductor cable, Rosemount Analytical, Inc., Irvine, CA - \$22,449.50.
- g. Contract to provide Employee Assistance Program (EAP) for three years, The Allen Group, Longwood, FL - \$50,343.
- h. Renewal of the interlocal agreement with Brevard County to continue to provide administrative services for the City’s Stormwater Utility - estimated cost of \$100,000.
- i. RESOLUTION NO. 1839: A resolution to implement FY 2002-2003 Third Quarter Budget Review recommendations.

14. SITE PLAN APPROVAL (SP-2003-19) NASA PALMS PROFESSIONAL CENTER: (Public Hearing) Site plan approval for professional and medical offices on a 5.0-acre lot zoned C-2 (General Commercial District), located on the southwest corner of NASA Boulevard and Broadband Drive. (Owner/Applicant/Representative - Florida Business Properties, LLC) (P&Z Board - 8/21/03)

Mrs. Dittmer reviewed the agenda report. This is a request for site plan approval for seven 6,000 square foot buildings for professional and medical offices on the southwest corner of NASA Boulevard and Broadband Drive.

The Planning and Zoning Board and staff recommended approval of SP-2003-19, site plan for NASA Palms Professional Center LTD, consisting of a one-sheet plan prepared by DAI, Droor & Associates Inc., of Melbourne, Florida, Project Number 2003-39 with a revised date of 8-11-03, subject to the following condition:

- a. Any change to the site plan will require re-evaluation of the plan by the Engineering Department and Planning and Economic Development Department.

A substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of five percent of the open space or vegetative areas on site; 2) an increase by more than five percent of the building square footage as shown on the site plan; or 3) an

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increase in building size, height, or setbacks, which is less than the minimum setbacks required by code.

There were no disclosures by City Council.

Planning and Economic Development Director Cindy Dittmer confirmed for Mrs. Poole that the pool will be filled when the building is demolished. Council Member Cheryl Palmer asked if there is a distinction between medical offices and a medical clinic. Mrs. Dittmer replied no; however, the parking has been calculated based on medical rather than professional. She added that she is not sure if the applicant knows all the tenants at this time.

Moved by Contreras/E. Palmer for approval of SP-2003-19 subject to the proposed condition.

Mrs. Hand asked if we have any idea what type of medical procedures will be performed in these buildings. Mayor Buckley replied no.

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

15. ORDINANCE NO. 2003-75 (CPA-2003-06), ORDINANCE NO. 2003-76 (Z-2003-958), AND ORDINANCE NO. 2003-77 (CU-2003-07) AND SITE PLAN APPROVAL (SP-2003-17A/SP-2003-17B) WAL-MART: Ordinances providing for a comprehensive plan amendment, rezoning, and conditional use for 1.03 acres and site plan approval on two parcels, consisting of 10.0± acres, located on the west side of Babcock Street, south of Florida Avenue. (Owner - Elisabeth Athanasakos) (Applicant /Representative - Kimley-Horn & Associates, Inc.) (P&Z Board - 8/21/03)
- a. Ordinance No. 2003-75 (CPA-2003-06): (First Reading/Public Hearing) An ordinance changing the land use from Commercial/Medium Density Residential to Commercial.
 - b. Ordinance No. 2003-76 (Z-2003-958): (First Reading/Public Hearing) An ordinance changing the zoning from C-1 (Neighborhood Commercial) to C-2 (General Commercial).
 - c. Ordinance No. 2003-77 (CU-2003-07/SP-2003-17A): (First Reading/Public Hearing) An ordinance granting a conditional use and site plan approval for an automotive service station.
 - d. Site Plan Approval (SP-2003-17B): (Public Hearing) Site plan approval to develop a Wal-Mart grocery store on a 10-acre parcel.

Attorney Gougelman read each ordinance by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board and staff recommended approval of CPA-2003-06 and Z-2003-958, and approval of CU-2003-06/SP-2003-17(A), subject to the following

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conditions:

- a. The site plan shall be consistent with the two-page plan prepared by Kimley-Horn and Associates of Vero Beach, Florida, with Project Number 047253351, dated 8-6-03. Any change to the site plan will require reevaluation of the site plan by the Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of five percent of the open space or vegetative areas on site; 2) an increase of more than five percent in the building square footage proposed; 3) any increase in the number of fueling pumps proposed; or 4) the addition of a driveway access.

- b. All trees shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve hardwood trees. Initially, trees shall only be removed for driveways, drainage facilities, and structures. Trees in the footprint of the structure shall be removed only in conjunction with a building permit. All trees to be removed shall be identified by Code Enforcement personnel, and an evaluation shall be made to determine the possibility of saving hardwood trees.

The Planning and Zoning Board and staff also recommended approval of SP-2003-17(B) with the following conditions:

- a. The site plan shall be consistent with the two-page plan prepared by Kimley-Horn and Associates of Vero Beach, Florida, with Project Number 047253351, dated 8-6-03. Any change to the site plan will require reevaluation of the site plan by the Engineering Department and Planning and Economic Development Department.

Any substantial change to the site plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of five percent of the open space or vegetative areas on site; 2) an increase of more than five percent in the building square footage proposed; 3) any increase in the number of fueling pumps proposed; or 4) the addition of a driveway.

- b. All trees shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve hardwood trees. Initially, trees shall only be removed for driveways, drainage facilities, and structures. Trees in the footprint of the structure shall be removed only in conjunction with a building permit. All trees to be removed shall be

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identified by Code Enforcement personnel, and an evaluation shall be made to determine the possibility of saving hardwood trees.

- c. All proposed roadway improvements along Florida Avenue shall be approved by the City of Melbourne Engineering Department.
- d. Driveway access improvements, deceleration lanes, and proposed median cuts shall be provided as required by the Florida Department of Transportation within the Babcock Street right-of-way.
- e. Outdoor sales shall not be permitted on site as noted on the site plan.

There were no disclosures by City Council.

Susan Motley, attorney representing Wal Mart, Ft. Lauderdale, said that this plan reflects the new Wal Mart concept – a neighborhood market. It is a smaller version of the super center/general merchandise store. They also plan to have a small liquor store, pharmacy with drive through and a Murphy Oil gas station with fueling pumps only. Ms. Motley noted that the site plan is consistent with the land use plan and the development regulations. She asked that the staff report be made a part of the record.

Continuing, Ms. Motley displayed an elevation of the neighborhood market. She elaborated on the exterior appearance and explained some of the store features. The store anticipates bringing in 80 new jobs and will increase the tax base.

Ms. Motley concluded by saying there would be a 6' pre-cast concrete wall on the south and west sides of the development. Also, she noted that they agree with the conditions.

Mr. Palmer asked the hours of operation. Ms. Motley said it will be a 24 hour store. Mr. Palmer asked if the 40,000 s.f. building will be consumed with just groceries. Ms. Motley replied that is a typical size grocery store with possibly a little more general merchandise.

Mrs. Poole asked who prepared the Environmental Impact Assessment. Ms. Motley said it was prepared by Kimley-Horn and has been submitted to staff. Mrs. Poole noted that one inactive gopher tortoise nest was identified. She referenced another site in the County where a report revealed very few gopher tortoises, yet the neighbors in the area found many on the site. A brief discussion followed regarding the State permitting requirements for gopher tortoises.

Mayor Buckley stated that he is opposed to the conditional use because it is located around the existing Hess gas station. Wal Mart will sell its gas cheaper and put Hess out of business. He added that the conditional use is supposed to promote economic order.

Ms. Motley replied that Hess and Murphy Oil are extremely competitive. She said that competition between gas stations is a desirable situation. She added that she does not believe Hess deserves to be protected because "they got there first."

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Mrs. Palmer reported that there are three other gas stations within a one block area of the Wal Mart gas station located at Sarno and Wickham Roads. It seems there are enough customers to go around and the Wal Mart facility may not be the kind of competition that will put Hess out of business.

Ms. Motley stated that it might be more convenient to pull into the Hess station rather than going into Wal Mart to pay for gas. She added that she thought competition was the American way.

Mrs. Palmer asked if Wal Mart would proceed with its plans if the conditional use were denied. Ms. Motley said that she does not make those types of decisions. She commented that gasoline is considered to be a service to Wal Mart customers.

Following a brief discussion, Ms. Motley said that in terms of the conditional use, the effect on the neighborhood should be considered – not the fact that a competitor is located next door. Mayor Buckley stated that he is concerned with driving that competitor out of business. Ms. Motley replied that if Hess can't compete, another station that can will locate there.

Moved by C. Palmer/Walker for approval of Ordinance No. 2003-75. Motion carried unanimously.

Mayor Buckley opened the public hearing.

Robert Serody, 3406 Mazur Drive, said he learned that his neighborhood was being invaded this morning when he read the newspaper article about the proposed Wal Mart development. He said that he has heard concerns raised about gopher tortoises and competitors but not for the human beings who live in the neighborhood.

Mr. Serody discussed traffic congestion in the area, especially for the residents located in the area between Babcock Street and Dairy Road. He questioned why this site is being considered when there is an abandoned Wal Mart located at Babcock Street and Eber Road.

Mayor Buckley clarified that Washington Mutual will occupy the former Wal Mart site at Babcock Street and Eber Road.

Mr. Serody asked Council to vote against the development and stated that this will damage the quality of life in his neighborhood.

William Habermann, 4585 Lake Waterford Way, stated that another Wal Mart is located three miles from this site and there are two other gas stations near this site. He questioned this proposal and said it is going to effect the neighborhood.

Patrick Murphy, Meadowridge Drive, said that he is located across the street from the

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project and he is opposed. If the project is approved, he asked that conditions be added so that the development is compatible with the surrounding neighborhood. Mr. Murphy said that Council should consider whether to allow a 24-hour grocery store, which will lead to an increase in traffic at all hours of the night. He stated that Florida Avenue is already a speed zone and the addition of Wal Mart will add to the residents' misery. Also, he pointed out that the liquor store is not a good idea, especially since Southwest Park is located nearby.

Ms. Motley clarified that the liquor store will not be open 24 hours. She said she believes it will be open until 10:00 p.m. and will have restricted Sunday hours (based on the City Code).

That concluded comments from the public.

Mayor Buckley asked Council to reconsider the vote since the vote was taken before he opened the public hearing. Attorney Gougelman said that someone on the prevailing side will need to make a motion to reconsider.

Moved by Poole/Buckley to reconsider (motion for approval of Ordinance No. 2003-75).
Motion carried. Mrs. Poole voted *nay.

*Following a brief discussion, Mrs. Poole explained that she thought she was voting on the ordinance; however, she did not change her vote on the motion to reconsider.

Moved by Contreras/Walker for approval of Ordinance No. 2003-75.

Mrs. Palmer stated that she understands the concerns that have been addressed; however, this property is located on a multiple lane highway, which will soon be widened. Multiple family is planned for an adjacent site and there is more than a 65' buffer between the proposed store and the property located at the rear. She said she does not really believe that this development will impinge on the residential area.

Mrs. Hand said that she was disappointed when the previous Wal Mart moved to Palm Bay/West Melbourne. She said if the store had this development in its five year or ten year plan, they could have used the existing building.

Mrs. Poole said she welcomed the comments from constituents and stated that she is going to enjoy voting no.

Mrs. Palmer said that because three people spoke, Council Members are now willing to change their votes. Mrs. Poole said that the vote has been reconsidered; therefore, members will not be changing their votes.

The question was called. The roll call vote was:

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

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Nay: Poole and Hand

Motion carried.

Moved by C. Palmer/Walker for approval of Ordinance No. 2003-76. The roll call vote was:

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

Nay: Poole and Hand

Motion carried.

Moved by Poole/Hand for denial of Ordinance No. 2003-77. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Mrs. Palmer said she voted for the denial in consideration of the concerns raised by the residents in the area.

Mayor Buckley said that the site plan (Item "d") would have to be amended based on the denial of the conditional use and returned for consideration at the next meeting.

Recessed: 9:23 p.m.

Reconvened: 9:33 p.m.

16. ORDINANCE NO. 2003-78 (Z-2003-945/SP-2003-05) SONESTA WALK SUBDIVISION: (First Reading/Public Hearing) An ordinance changing the zoning from R-2 (Cap 6) (One-, Two-, and Multiple-Family Residential with a cap of six units per acre) to P.U.D. (Planned Unit Development) and site plan approval on a 55.15-acre parcel, located on the east side of Dairy Road, between Eber Boulevard and Palm Bay Road. (Owner/Applicant/Representative - Dairy Towns Community Developers, Inc.) (P&Z Board - 8/21/03)

Attorney Gougelman read Ordinance No. 2003-78 by title. There were no disclosures by Council.

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board and the Planning and Economic Development Department recommended approval of Z-2003-945 with the following conditions:

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- a. The development must be consistent with the preliminary development plan consisting of a one-page site plan prepared by RK Engineering of Melbourne, Florida, and titled Sonesta Walk Subdivision, dated June 28, 2003.

Any substantial change to the preliminary development plan will require review and approval by the Planning and Zoning Board, Local Planning Agency, and the City Council. A substantial change includes, but is not limited to: 1) a decrease of the open space or vegetative areas on site; 2) an increase in the number of units proposed; 3) any increase in building height; or 4) the addition of a driveway access point.

- b. Clearing of areas within a single development phase will be permitted and subsequent phases of the plat shall remain undisturbed until ready for construction. Project construction shall not permit the accumulation of surface water or flooding of upland portions of the property.
- c. The owner/applicant shall extend Range Road east of the proposed street connection to an area adjacent to the jog in the north line of the plat, west of the public drainage canal.
- d. The owner/applicant shall convey to the City of Melbourne, a 10-foot wide strip of land along the south edge of Range Road.
- e. Block lengths must be modified to not exceed 1,500 feet in length or a subdivision variance must be requested at the time of preliminary plat review.

Mrs. Poole asked if the development is required to have yards. Mrs. Dittmer said they do in the single-family portion but not in the townhomes section. Mrs. Dittmer elaborated on the recreation facilities planned for this development.

Morris Smith, project manager, Dairy Towns, pointed out on the map where the open green areas will be located. The uplands will remain wooded and there will be a six-foot wide walking trail, basketball courts and tennis courts. Eleven gopher tortoises will be returned to the site after construction. The tract where they are currently located will remain in its natural state.

Mrs. Palmer said she is looking for the open area for children. Mr. Smith said that the rear yard setbacks are 25' and the front yard setbacks are 30'. He added that 30' will provide a large front yard.

Mrs. Poole asked where the garages are located. Mr. Smith said immediately in front of each unit. Following a brief discussion about garages, Mr. Smith said he would provide an additional drawing showing the garages. Discussion followed regarding the location of utilities.

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In response to Mrs. Poole, Mrs. Dittmer clarified that the wetlands will not be used for retention, the lakes will be the retention area. The development will meet the open space requirements without utilizing the area of the retention ponds.

Mrs. Poole asked for additional information about Dairy Townhomes. Mr. Smith said it is part of Mercedes Homes. He added that he is a staff civil engineer employed by Mercedes Homes.

Mr. Palmer asked about the size of the townhouses. Mr. Smith stated that the plan shows the minimum square footage required by Code. These townhomes will be 1,500 – 2,500 s.f.

Mayor Buckley asked the applicant to provide drawings indicating the garages by the next meeting.

Mr. Smith concluded by agreeing with the stipulations.

There were no comments from the public.

Moved by Hand/Walker for approval of Ordinance No. 2003-78.

Mrs. Palmer stated that the applicant did a good job designing the conservation area, boardwalk and lakes; however, the purpose of the PUD is to allow green, open area. She pointed out that there are no parks or school yards nearby. She added that she will vote no because of the lack of open space for the residents, especially children.

Mrs. Poole said she can't support this because the development will return with a variance request to exceed the permitted block lengths. She added that if they designed the development within the allowed block lengths, it would provide more room for yard area.

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

Council convened as the Downtown Melbourne Community Redevelopment Agency for the following item:

17. COUNCIL ACTION RE: Approval of a three-year lease arrangement for holiday décor and funding of up to \$14,000 annually for a "Festival of Lights Celebration" in conjunction with a "Doors to Downtown" fundraiser and authorization for the City Manager to execute a subsequent agreement.

Mrs. Dittmer reviewed the agenda report.

Mrs. Poole asked how long the decorations will remain in place. Mrs. Dittmer said that they are typically installed after Thanksgiving and then taken down 7 – 10 days after Christmas.

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Mrs. Poole asked why Clark Sales was selected. Mrs. Dittmer explained that the City has used Clark before; they provide a quality product and they are on State contract.

Mrs. Poole said the side streets in Downtown Melbourne are in desperate need of sidewalk repair; therefore, she has a problem with money for decorations being taken from the redevelopment fund. She discussed the cost of these decorations versus the cost currently being paid by the Town of Indialantic.

In response to Mrs. Walker, Mr. Schluckebier pointed out the area where the decorations will be installed.

A brief discussion followed regarding the “Doors to Downtown” fundraiser. The City Manager clarified that the reference to the fundraiser is for information only. Money is not being requested from the CRA for the fundraiser.

Moved by Hand/Contreras for approval of up to \$14,000 in funding from the CRA budget and authorization to allow the City Manager to sign a formal lease agreement (with Clark Sales) for a three-year period. Motion carried unanimously.

Mrs. Poole said she reluctantly voted aye because Indialantic is very pleased with their decorations.

Council reconvened for the remaining agenda items.

18. RESOLUTION NO. 1840 (STORMWATER UTILITY BUDGET): (Public Hearing) A resolution to adopt an annual stormwater utility budget for the fiscal year beginning October 1, 2003.

Attorney Gougelman read Resolution No. 1840 by title. Mr. Ralls reviewed the agenda report. There were no comments from the public.

Moved by Contreras/Walker for approval of Resolution No. 1840.

In response to Mr. Palmer, Mr. Ralls elaborated on the capital improvement projects. A brief discussion followed regarding the flooding problems on Front Street. Mr. Ralls said funding has been provided to evaluate the problem and determine a solution. A construction project would have to be established later. Mr. Ralls confirmed for Mrs. Palmer that the Causeway Center development will be taken into account when evaluating the problem.

The question was called. Motion carried unanimously.

19. RESOLUTION NO. 1841 (CERTIFICATION OF STORMWATER ASSESSMENT ROLL): A resolution certifying the Stormwater Utility Assessment Roll.

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The City Attorney read the resolution by title. Mr. Ralls reviewed the agenda report. There were no comments from the public.

Moved by Poole/Contreras for approval of Resolution No. 1841.

In response to Mr. Palmer, Mr. Ralls explained that we started with a rate of \$36; however, we gave an across the board credit of 50%. Eighteen dollars has been the rate since 1999. The new rate will increase from \$18.00 to \$21.60. And, we do not have a credit system in place for property owners who provide stormwater retention on their property.

Mrs. Palmer said that the City is going to raise taxes on top of a water rate increase. She is opposed to reducing the credit for the stormwater utility.

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

20. ORDINANCE NO. 2003-79: (First Reading) An ordinance amending Chapter 11, Elections, providing for procedures and the filling of vacancies in candidacy for City Council.

Mr. Gougelman read Ordinance No. 2003-79 by title.

Mrs. Poole referenced the scenario where the general election date has passed and a vacancy in candidacy occurs. She asked if the appointment of a person to Council by the existing Council Members would be for one year or four years. Attorney Gougelman said he would review the Charter and respond by the next meeting.

Moved by Hand/E. Palmer for approval of Ordinance No. 2003-79. Motion carried unanimously.

21. COUNCIL ACTION RE: Approval of settlement agreement with National Fire and Safety Education Systems, Inc. - \$170,000.

Attorney Gougelman reviewed the terms of the settlement agreement and responded to general questions.

A brief discussion followed regarding the need to obtain bids if a similar situation arises in the future. Mrs. Palmer and Mr. Palmer asked about the lease payments. Mr. Schluckebier said that the City will receive a certain number of free spaces in each class. Additionally, the Fire Chief believes that, based on the number of firefighters expected to train at this site (from other jurisdictions), the investment made by the City will be recovered in four years.

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Moved by C. Palmer/E. Palmer for approval of court-ordered mediation settlement agreement and appropriation from Capital Construction Reserve account. Motion carried unanimously.

22. COUNCIL DISCUSSION RE: Army Corps of Engineers funding request for Lakes Sawgrass and Hell 'N Blazes dredging project.

Public Works/Utilities Director Robert Klapproth referenced the aerial distributed to Council, which shows the headwaters to the St. Johns River around the Indian River County line. (St. Johns river flows north.) Lake Hell 'N Blazes is the first lake in the chain. This entire area is a drainage basin for property located as far west as Osceola County. Over the years, mostly related to agriculture activities, runoff has accumulated and Lakes Sawgrass and Hell 'N Blazes are almost completely full of silt.

Initially, the Florida Fish and Wildlife Conservation Commission (FWC) raised the concern that fish can't live and repopulate in these lakes. An initiative was created by FWC to dredge and restore the lakes; however, they did not have the wherewithal to take on the project. In 1987 it was a \$5 million project and today it is a \$13.1 million project.

The St. Johns River Water Management District (SJRWMD) is working on the C-1 diversion project. The flow of the C-1 will be reversed and another large impoundment area, like Garcia Reservoir or Stick Marsh, will be created. Everyone has realized that if the SJRWMD moves too fast and builds/floods the impoundment area, it can't be used as a dredge site for the lakes.

Mr. Klapproth stressed that these two lakes are the headwaters of Melbourne's water supply. There is already an indication that the silt is moving northward and is starting to move into the south end of Lake Washington. There is not a grave danger at this time, but there will be 10 years from now.

The Corps of Engineers is funding the project with 65% federal funds. That leaves a shortfall of \$2.4 million. The FWC is funding \$400,000 and the SJRWMD will look towards Cocoa for \$100,000, Palm Bay for \$100,000, the County for \$250,000 and the City for \$800,000. The City of Melbourne feels it is to our benefit to commit money to this project.

Mr. Palmer said that the City supplies water to seven other cities. He asked if there is a way to tap their resources. Mr. Klapproth said that our funding would come from the Water and Sewer fund; therefore, in a sense we would be tapping the other cities.

Mr. Schluckebier said that he and the Mayor have communicated verbally with other cities and the SJRWMD has sent letters. The City has received responses from some cities indicating that "we pay our rates; the project should be paid from the rate money, if the rates go up, fine; we understand what you have to do." He added that the smaller cities don't have that kind of capital.

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A brief discussion followed regarding whether we would be successful in receiving contributions from other cities.

Mrs. Palmer asked – short of getting funding from other sources – if the City is talking about raising its rates. Mr. Schluckebier replied no. He added that the City believes this is an appropriate use of utility funds. To have this federal money go away would be a tactical and strategic error for the City.

Moved by Buckley/Contreras to authorize Public Works/Utilities Director Robert Klapproth to do the best he can during negotiations and commit whatever funds are necessary to do the project.

The Mayor confirmed that the intent of the motion also involves Mr. Klapproth working through the City Manager for approval.

The question was called. Motion carried unanimously.

23. COUNCIL ACTION RE: Historic Preservation Advisory Committee - appointment of *one member

*Karen Raley declined the August 26 appointment by Council; therefore, the appointment is for two members.

Mrs. Palmer asked that the replacement of Ms. Raley be postponed so that she can talk to her. Mrs. Poole agreed.

Mrs. Poole appointed Richard Wallace to the committee and discussed his background and interest in the City of Melbourne.

Moved by E. Palmer/C. Palmer to appoint Richard Wallace. Motion carried unanimously.

24. COUNCIL ACTION RE: A request for Council Member Pat Poole to attend the September 12 quarterly meeting of the Florida League of Cities Environmental Quality Policy Committee at the Hyatt Regency, Orlando International Airport Hotel.

Note: Under this item, staff asked Council to consider establishing a policy authorizing Council Members who serve on Florida League of Cities policy committees to travel to meetings without further action by Council.

Mr. Palmer stated that he is a member of the Intergovernmental Relations policy committee; therefore, he would like authorization to attend the September 12 meeting too.

Moved by Poole/E. Palmer for approval. (Replaced by substitute motion.)

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Mrs. Palmer referenced the request to establish a policy. She recommended Council review its travel budget. Council Members should prioritize the meetings they wish to attend. Mrs. Poole said that the members who serve on the policy committees don't set the meeting dates. She added that it is an asset to the City of Melbourne for Council Members to serve on these committees; information gleaned at these meetings is very helpful.

Mayor Buckley recommended that Mrs. Poole and Mr. Palmer provide Council with a list of the upcoming policy committee meetings. Mr. Palmer and Mrs. Poole said they did not have a problem with Council reviewing the policy.

Mayor Buckley offered the following substitute motion:

Moved by Buckley/C. Palmer to approve Council Members Poole and Ed Palmer to attend the September 12 policy committee meetings. Motion carried. Mr. Contreras voted nay.

25. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

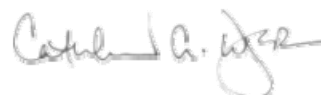
City Attorney Paul Gougelman advised Council that legal staff needs guidance in the City of Melbourne v. Florida Recyclers of Brevard, Inc. litigation. Council concurred with conducting an Attorney-Client (shade) meeting on September 16 at 6:00 p.m. (prior to the budget public hearing).

Mr. Schluckebier discussed the City's effort to inform the public about the one-cent infrastructure sales tax referendum.

26. ADJOURNMENT

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

The meeting adjourned at 11:20 p.m.



City Clerk – 9/18/2003

Approved by Council 9/23/2003