

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
OCTOBER 28, 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 6:30 p.m. by Mayor John A. Buckley.

1. Reverend Michael E. Maguire, Lighthouse Assembly of God 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
	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

Absent: Cheryl Palmer Council Member, District 5 (out of town)

4. PROCLAMATIONS AND PRESENTATIONS

None.

5. APPROVAL OF MINUTES – September 30, 2003 Special Meeting and October 14, 2003 Regular Meeting.

Moved by Hand/E. Palmer for approval of the September 30 and October 14 minutes.  
Motion carried unanimously.

6. CITY MANAGER'S REPORT

No additions/no discussion.

7. PUBLIC COMMENTS

None.

Council considered Items 13 – 18 before proceeding with Item 8 because of the change in meeting time (6:30 p.m.) versus the time the public hearings were advertised (7:30 p.m.).

UNFINISHED BUSINESS

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8. ORDINANCE NO. 2003-80 (CU-2003-10) AND ORDINANCE NO. 2003-81 (Z-2003-963) RIVER PALMS: Ordinances providing for a conditional use to allow a marina facility on residential property and to rezone property located on the east side of North Harbor City Boulevard, at the intersection of Post Road. (Owner - Charles Boyd Construction Corporation) (Applicant - Coastal Technology Corporation/Charles Boyd Construction Company)
- a. Ordinance No. 2003-80 (CU-2003-10): (Second Reading/Public Hearing) An ordinance granting a conditional use to allow a marina facility on residential property. (First Reading - 10/14/03)
  - b. Ordinance No. 2003-81 (Z-2003-963): (Second Reading/Public Hearing) An ordinance to rezone the front .92 acres from R-3 (15) (Multiple-Family Dwelling District with a cap of 15 units per acre) to R-P (Residential Professional). (First Reading - 10/14/03)

Attorney Paul Gougelman read Ordinance Nos. 2003-80 and 2003-81 by title. There were no comments from the public and no disclosures by Council.

Moved by Hand/E. Palmer for approval of Ordinance No. 2003-80.

Mrs. Poole discussed the efforts that are being taken to restore the Indian River Lagoon from the effects of pollution. She said that construction along the river contributes to its demise and recommended Council vote no on this item in order to preserve the river for future generations.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2003-81. The roll call vote was:

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

Nay: Poole

Motion carried.

9. ORDINANCE NO. 2003-82 (CU-2003-09/SP-2003-28) TOYOTA/LEXUS PRUITT EXPANSION: (Second Reading/Public Hearing) An ordinance granting a conditional use and site plan approval to build an accessory vehicle storage lot on property zoned

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R-P (Residential Professional), located on the north side of Brevard Drive, east of Babcock Street, and west of Highway U.S. 1 and a storage use agreement. (Owner/Applicant - Buchanan Farms, Inc. and 198, Inc.) (Applicant - John Tosch) (Representative - BSE Consultants, Inc., Scott and Ana Glaubitz) (Postponed - 10/14/03)

The City Attorney read the ordinance by title. There were no disclosures by Council. Mayor Buckley opened the public hearing.

Phil Nohrr, attorney representing the applicant, was available for questions.

Moved by Contreras/E. Palmer for approval of Ordinance No. 2003-82.

Mrs. Poole discussed her concerns with the Pruitt house/property being converted to a parking lot. She said that she is opposed to the applicant being permitted to construct the lot without interior landscaping and noted that the extra landscaping proposed for the perimeter will not replace what is being destroyed.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

10. ORDINANCE NO. 2003-85 (CPA-2003-09) AND ORDINANCE NO. 2003-86 (Z-2003-964) BRANDON PROPERTIES RIVERVIEW HEIGHTS: Ordinances providing for a comprehensive plan amendment and rezoning on a 2.40-acre parcel, located south of Line Street, east of South Harbor City Boulevard, west of Melwood Drive, and north of Shenandoah Drive. (Owner - Harry Brandon, Patricia Miller, and Brandon Properties, Inc.) (Applicant - Robert Kodsi) (Representative - Phil Nohrr)
- a. Ordinance No. 2003-85 (CPA-2003-09): (Second Reading/Public Hearing) An ordinance granting a comprehensive plan amendment to change the future land use on 1.5 acres on Commercial and 0.9 acres of Medium Density Residential to mixed-use Commercial/Medium Density Residential for the entire 2.40-acre parcel. (First Reading - 10/14/03)
  - b. Ordinance No. 2003-86 (Z-2003-964): (Second Reading/Public Hearing) An ordinance rezoning 1.5 acres of C-2 (General Commercial) and 0.9 acres of R-3 (15) (Multiple-Family Dwelling) to C-1 (Neighborhood Commercial). (First Reading - 10/14/03)

The City Attorney read both ordinances by title. There were no disclosures by Council. Mayor Buckley opened the public hearing.

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Phil Nohrr, attorney representing the applicant, was present and available for questions.

Moved by Hand/Walker for approval of Ordinance No. 2003-85. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by E. Palmer/Hand for approval of Ordinance No. 2003-86. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2003-87 (CU-2003-13) ARCHAMBEAU EARLY LEARNING CENTER: (Second Reading/Public Hearing) An ordinance granting a conditional use to allow a childcare/preschool center on property zoned C-1A (Professional, Offices, and Services), located on the south side of Eau Gallie Boulevard, west of Commodore Boulevard, and east of Croton Road. (Owner - Commodore Partnership) (Applicant/Representative - Gidget Archambeau) (First Reading - 10/14/03)

Attorney Gougelman read Ordinance No. 2003-87 by title. There were no disclosures by Council. Mayor Buckley opened the public hearing.

Gidget Archambeau, applicant, was available for questions.

Moved by E. Palmer/Hand for approval of Ordinance No. 2003-87. The roll call vote was:

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

Nay: None

Motion carried unanimously.

12. ORDINANCE NO. 2003-88: (Second Reading/Public Hearing) An ordinance amending Chapter 2, Section 2-97, City Code as it relates to the composition of the Beautification and Environmental Advisory Committee; designating representatives from various departments and organizations as opposed to specific titles. (First Reading - 10/14/03)

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The City Attorney read the ordinance by title. There were no comments from the audience.

Moved by Poole/Walker for approval of Ordinance No. 2003-88. The roll call vote was:

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

Nay: None

Motion carried unanimously.

NEW BUSINESS

13. COUNCIL ACTION RE: Contract for Fee Avenue Pool and related equipment, Weller Pool Constructors, Inc. Apopka, FL, Project No. C03103 - \$658,880.

Mr. Ralls reviewed the agenda report.

In response to Vice Mayor Contreras, Mr. Ralls said that the City has been contacted by athletic groups interested in funding a gas heater. He added that we would expect them to fund the operation of the heater, too, which will be the costly part. The pool construction will include plumbing to accommodate this feature later.

Council Member Ed Palmer noted that the City's direct purchase of the pool work will save approximately \$13,500 in taxes on the pool materials. He asked if this will be used to offset the cost of the pool heater. Mr. Schluckebier said we do not intend to use the savings for the heater – it happens to be a similar amount. Mr. Ralls added that we will wait until we have agreements in place with various groups before providing the heater.

The Mayor read the recommendation, which is for approval of the contract with Weller Pool Constructors to furnish and install the Myrtha pool and related equipment in the amount of \$658,880 and that interim financing be provided from the General Fund Capital Construction Reserve with permanent financing to be provided by Revenue Bonds.

Moved by Poole/Hand for approval.

Council Member Walker asked if solar heat has been considered. Ralls said he is not sure if that would be less costly because of the size of the pool; however, he noted that staff will make that determination prior to proceeding with a gas heater.

The question was called. Motion carried unanimously.

14. CONSENT AGENDA:

Moved by Contreras/Hand for approval of the consent agenda, Items "a – d."

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Staff responded to questions from Mr. Palmer on Item “b”; however, the item was not removed from the consent agenda.

Following a brief discussion on the traffic signal preemption program, Mr. Contreras recommended that the Fire Chief brief Council on how well the system is working.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Traffic signal preemption program, Project I04101 and traffic signal upgrade program, Project I04100.
    - i. Contract to purchase traffic signal preemption equipment, Brown Traffic Products, Inc., Davenport, IA - \$32,530.
    - ii. Contract to install traffic signal preemption equipment, Traffic Control Devices, Altamonte Springs, FL - \$12,890.50.
    - iii. Contract to purchase signal upgrade equipment, Naztec, Inc., Sugarland, TX - \$87,565.
    - iv. Contract to install traffic upgrade equipment, Traffic Control Devices, Altamonte Springs, FL - \$12,794.88.
    - v. Transfer of \$9,405 in savings from FY 02/03 preemption project fund and \$14,479.50 in savings from the FY 03/04 preemption project fund to the Traffic Signal Upgrade Program Fund.
  - b. Purchase of six vehicles from various dealers - \$100,731.
  - c. Software licenses and maintenance of Novell software, Softchoice Corporation, Toronto, Canada - \$22,584.57.
  - d. Resolution No. 1845: A resolution delegating authority to the City Manager to negotiate and execute certain documents and agreements.
15. PRELIMINARY PLAT APPROVAL (SD-2003-06): (Public Hearing) Preliminary plat approval for Wickham Business Center, a 15.99-acre parcel, zoned M-1 (Light Industrial District), located on the west side of Wickham Road, south of Lake Washington Road, and north of Aurora Road. (Owner/Applicant – Frederick Spiegel, Spiegel Lease Corp.) (Representative – B.S.E. Consultants, Inc.) (P&Z Board – 10/02/03)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the preliminary plat for 2200 Wickham Business Center, consisting of a one-sheet plan prepared by B.S.E. Consultants, Inc., of Melbourne,

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Florida, Project Number 10188.02, dated 09/23/03, with a stamped and sealed date of 09/24/03, 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) any increase or decrease in the number of access points including public or private streets to or from the subdivision, and/or 2) an increase of more than two lots.

- b. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate or relocate gopher tortoises found on the property. Should other threatened or endangered species be found on the site prior to or after commencement of construction, all construction shall be suspended until adequate permits are acquired or appropriate jurisdictional agencies provide approval to proceed with development.
- c. Provide a deceleration and acceleration lane on Wickham Road as required by City Code, Chapter 29 (b) (1) e, and permitted by Brevard County.
- d. A six-foot opaque fence is required along the north and west property lines.

Council Member Poole asked who performed the Environmental Impact Assessment. Mrs. Dittmer said B.S.E. Consultants, Inc. Mrs. Poole asked if they plan on taking the gopher tortoises. Mrs. Dittmer replied that she is not sure if they are that far along in the permitting process.

Mayor Buckley called for disclosures. There were no disclosures from Council. Mayor Buckley opened the public hearing.

Frederick Spiegel, applicant, addressed Council.

In response to Mr. Palmer, Mr. Spiegel reviewed how the various tracts will be used.

Mrs. Poole asked what will be done with the gopher tortoises. Mr. Spiegel said they will work with a company to relocate the tortoises. He added that he has followed this process before.

Mayor Buckley asked Mr. Spiegel if he agreed with the conditions and Mr. Spiegel replied yes.

Moved by Contreras/Walker for approval of the preliminary plat, subject to the conditions noted. Motion carried unanimously.

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16. FINAL PLAT APPROVAL (SD-2002-02B): (Public Hearing) Final plat approval for Eagle Lake East, Phase Two Subdivision on an 18.3-acre parcel zone P.U.D. (Planned Unit Development), located west of Lipscomb Street and south of Pirate Lane. (Owner/Applicant – Eagle Lake Two Development Company) (Representative – Massimo Bosso) (P&Z Board – 10/02/03)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of the final plat, consisting of a two-sheet plan prepared by William Mott Land Surveying, Inc. of Satellite Beach, Florida, with a revised date of 9/25/2003, 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 or decrease in the number of access points including public or private streets to or from the subdivision; and/or 2) an increase of more than two lots.

- 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 amended Storm Water Maintenance Agreement, homeowners' association documents, and Covenants and Restrictions, in form and substance acceptable to the City Manager and City Attorney.
- d. Provide a warranty deed or other acceptable form of deed acceptable to the City Attorney and City Manager conveying Tract K as public right-of-way in favor of the City of Melbourne.
- e. Provide a warranty deed conveying Tracts C, D, E and F to the homeowners' association.
- f. Provide a Bill of Sale for the water and sewer lines.

Mayor Buckley asked for disclosures. Mrs. Poole said that she drove by and knows the area very well. She added that the property used to be solid pines and now it looks like a desert.

Mrs. Poole referenced the findings and asked how approval of this plat will promote the public health, safety, welfare, economic order, etc. Mrs. Dittmer said that it will provide residential housing for our community and will not have an unsafe or unhealthy effect. The property was developed based on the approved PUD zoning in the Code. Mrs. Poole disagreed and encouraged Council to drive by and look at the development.

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Mike Evans, representing the applicant, reported that gopher tortoises were found and relocated in the original phase by a professional, licensed company. Mr. Evans agreed with the stipulations.

Moved by E. Palmer/Hand for approval of the final plat, subject to the conditions noted. Motion carried. Mrs. Poole voted nay.

Council considered Items 17 and 18 as one package.

17. ORDINANCE NO. 2003-89 (A&V#273): (First Reading/Public Hearing) An ordinance to abandon and vacate a 46.5-foot segment of a 10-foot wide easement for public right-of-way on Holmes Regional Medical Center property adjacent to Hickory Street.
18. ORDINANCE NO. 2003-90 (CU-2003-02/SP-2003-08) HOLMES REGIONAL MEDICAL CENTER: (First Reading/Public Hearing) An ordinance granting a conditional use and site plan approval for additional building height in the C-1 (Neighborhood Commercial) zoning district, with site plan approval to expand and redevelop portions of the hospital property, located on the north side of Hibiscus Boulevard, east and west of Hickory Street, and south of NASA Boulevard. (Owner/Applicant – Holmes Regional Medical Center) (P&Z Board – 9/18/03)

The Planning and Zoning Board unanimously recommended approval of the project subject to the following conditions:

- a. The conditional use shall be consistent with the site plan for Holmes Regional Medical Center OB & North Expansion, consisting of five sheets prepared by PBS&J, of Melbourne, Florida, with Job Number 150491.10, with a revised date of 9/8/03, and signed and sealed on September 9, 2003. The conditional use shall permit the construction of building heights not to exceed 110 feet in areas of the hospital property as depicted on the site plan.

Any substantial change to the plan shall require review of the site plan by the Planning and Zoning Board and City Council. A substantial change includes but is not limited to 1) a five percent or more increase in the size (square footage) of the building on the properties; 2) a proposal to extend the heights of the buildings above 40 feet in height except as indicated on the above listed site plan; 3) any decrease in the amount of parking that would result in less parking than required by Code; or 4) any proposal to relocate the heliport from either one of the two north towers.

- b. The applicant shall obtain variances from the Board of Adjustment for any building encroachments into required yards not permitted by the existing variances
- c. The 146,640 square foot medical office building and required parking area associated with the building shall not be eligible for tax-exempt status.

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- d. Transportation Impact Fees will be paid for all building expansions.
- e. An abandonment and vacation of the easement to permit the construction of the obstetrics elevator tower, as shown on the site plan, shall be required.
- f. The applicant shall repair any roadway areas fronting the development that are damaged during the construction process, which may include resurfacing, replacement of curbs/gutters, etc.
- g. If and when warranted, traffic signals shall be erected at the applicant's expense at the intersection of Hickory Street and Sheridan Road and Oak Street and Hickory Street.
- h. The placement or relocation of bus stops shall be coordinated with Space Coast Area Transit to comply with the Comprehensive Plan, Transportation Element, Objective 5, Policy I.
- i. The conditional use shall be consistent with the rendering submitted by the applicant, dated 10/13/03.

Attorney Gougelman read Ordinance Nos. 2003-89 and 2003-90 by title. Mrs. Dittmer reviewed the agenda report for Item #18.

Phil Nohrr, representing the applicant, briefed Council on Item #17 and distributed written information titled "Holmes Regional Medical Center – A & V, Conditional Use, Site Plan Exhibits." Mr. Nohrr reported that the Board of Adjustment unanimously approved their variance requests. One of the variances relates to the elevator, which is involved with this item.

Continuing, Mr. Nohrr said that the hospital intends to take the existing obstetrics area and move it to the new fourth floor. The new elevator entrance will allow for speed and safety. Expectant mothers will be able to take the elevator directly to the fourth floor. And, if there are security issues, the hospital will be able to secure the one entrance quickly. The new elevator, coupled with the hurricane reinforcement "skin", will result in an encroachment into the right-of-way easement.

At this point, Mr. Nohrr introduced representatives in the audience from Holmes Regional Medical Center.

Mr. Nohrr and Mr. Mills (Facilities, HRMC) addressed Council's questions regarding security.

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There were no other comments from the public.

Moved by Poole/Walker for approval of Ordinance No. 2003-89.

Mrs. Hand declared a conflict of interest because she is employed as a nurse at Health First Corporate Partners, which is affiliated with Holmes Regional Medical Center.

The question was called. Motion carried unanimously. Mrs. Hand abstained from voting.

Council considered Item #18 next. Mayor Buckley called for disclosures. Mr. Contreras said he received a call from Tom Mills, Holmes Regional Medical Center, who left a message relative to the three variances and this item. Mrs. Walker said she received a similar call. Mrs. Hand said she received a call; however, she indicated that she would be declaring a conflict of interest on this item and would not be voting. Mrs. Poole said she spoke with Tom Mills who discussed the variances before the Board of Adjustment and the items on this agenda. Mayor Buckley said he spoke with Mr. Mills who briefly reviewed the items on the agenda.

Mrs. Hand said that even though she can't vote for this item she believes it is a great project for our City and the surrounding community.

Mayor Buckley opened the public hearing.

Phil Nohrr, attorney representing the applicant, briefed Council on Item #18. He referenced a map and discussed what projects are complete and what projects are under construction. Mr. Nohrr elaborated on each phase of the project and addressed sections of the Developer's Agreement. He explained how various requirements in that agreement are being met/affirmed.

Mr. Nohrr said he is not aware of any contention regarding this request. They have talked to the neighbors and explained the project in detail. He concluded by asking for approval.

Mr. Contreras asked if the three- and four-story structures will be configured to handle future expansion and loads. Mr. Mills replied that the three-story structure will be designed to go up to a fourth floor.

Mr. Contreras asked if there is an estimate on the number of new jobs the expansion will bring.

Chris Kennedy, President, Holmes Regional Medical Center, explained that although they have not finalized an operational plan, the expansion will require additional people.

Mayor Buckley asked if the applicant agreed with the stipulations and Mr. Nohrr said yes.

There were no other comments from the public.

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Mrs. Hand declared a conflict of interest because she is employed as a nurse at Health First Corporate Partners, which is affiliated with Holmes Regional Medical Center.

Moved by E. Palmer/Poole for approval of Ordinance No. 2003-90.

Mr. Palmer discussed the importance of this project and said that it has been a cooperative effort between the hospital and the City. He commended the hospital for its efforts. Mrs. Poole commended Tom Mills for all the effort he put into this project. Mr. Contreras echoed the same sentiments and added that this is a win/win project for the City and the hospital. Mrs. Walker agreed with the comments and Mayor Buckley stated that this is a great project.

The question was called. Motion carried unanimously.

Recessed: 8:00 p.m.

Reconvened: 8:11 p.m.

19. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mrs. Poole asked if demolition permits can be amended to clearly state that the removal of vegetation is prohibited.

Mr. Schluckebier asked Council to discuss whether it wished to conduct the second meeting in December (December 23).

Moved by Poole/E. Palmer to (cancel) the second meeting in December (December 23).  
Motion carried unanimously.

20. ADJOURNMENT

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

The meeting adjourned at 8:30 p.m.



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City Clerk – 11/5/2003

Approved by Council: 11/18/2003

Attachments to the official minutes:

Memorandum of Voting Conflict Forms for Loretta Isenberg-Hand (reference Items #17 and #18)