

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
NOVEMBER 25, 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. Vice Mayor Cheryl Palmer gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Richard Contreras	Council Member, District 1
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Vice-Mayor, District 5
	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:	Ed Palmer	Council Member, District 2 (out of town)
	Loretta Isenberg-Hand	Council Member, District 6 (ill)

4. PROCLAMATIONS AND PRESENTATIONS

None.

5. APPROVAL OF MINUTES

Moved by Walker/Contreras for approval of the November 18 regular meeting minutes.
Motion carried unanimously.

6. CITY MANAGER'S REPORT

City Manager Jack Schluckebier updated Council on the following:

- *Space Coast Area Transit bus schedule (issue raised at last meeting).* Staff has been able to determine that, although certain changes have been made, the route hasn't been modified as to its dimensions/directions. He asked Council Members to provide him specific information about riders experiencing difficulties so that staff can make contact.
- *Expected completion date for Wickham Road Ground Storage Tank and Booster Pump Station (reference last meeting).* The land acquisition was funded last year, the design is scheduled for this fiscal year and the project will be built next fiscal

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year. The lease with the Florida Inland Navigation District for the one-acre property is for 30 years with an option for the City to pursue an additional 30 years.

- *Film crew.* The City was notified by a student at Florida Metropolitan University that a film crew will be in Downtown Melbourne on November 28. The project involves a 20-minute film called Sicily.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. CONSENT AGENDA:

Moved by Poole/Contreras for approval of the consent agenda. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Installation of traffic signal preemption at Hibiscus Boulevard/Hickory Street for Fire Station 74, Project No. I04101, Building Management Systems, Melbourne, FL - \$4,686.27 and budget transfer from the FY 2004 Traffic Calming Road Improvement budget into this project budget.
 - b. Cleaning and restoration of approximately 13,142 linear feet of 12-inch sewage force main, Professional Piping Services, Inc., Zephyrhills, FL - \$24,970.
 - c. Purchase of five replacement vehicles from four dealers - \$162,410.
9. ORDINANCE NO. 2003-94 (CU-2003-18/SP-2003-30) VENETIAN VILLAGE: (First Reading/Public Hearing) An ordinance granting a conditional use and site plan approval to allow a multiple-family development on 11.06± acres in a C-1 (Neighborhood Commercial) zoning district, located on the west side of Dairy Road, north of Palm Bay Road. (Owner/Applicant – Frank Brockerman) (Representative – Jake T. Wise) (P&Z Board – 11/06/03)

City Attorney Paul Gougelman read Ordinance No. 2003-94 by title. Planning and Economic Development Director Cindy Dittmer reviewed the agenda report. A conditional use was approved for the same property on July 8 of this year for 71 residential units with a condition that required the development to “follow the platting process.” The applicant had intended to plat the development for townhomes but is now requesting a site plan approval for a gated condominium-style development. The new development proposes 116 units in 13 buildings with a garage for each unit. The density will be 10.5 units per acre. Access will be provided from Dairy Road with a private driveway. A recreation area is proposed on the western portion of the property.

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Additionally, this ordinance provides for the repeal of the former conditional use (Ordinance No. 2003-40).

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

- a. The conditional use shall be consistent with the one-page site plan for Venetian Village, prepared by CEG Engineering, dated 10/7/03, with a sealed date of 10/27/03. 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 five percent or more in the building size or number of parking spaces; or 3) any increase in the number of units.

- 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. The applicant/developer shall take measures necessary to save as much natural native vegetation as possible. When possible building, retention and parking spaces shall be placed in locations to permit for the maximum preservation of trees and other native vegetation.
- d. Prior to construction plan approval the applicant shall obtain the approval from the St. Johns River Water Management District to permit removal or modification to any wetlands on the property.
- e. The conditional use shall be consistent with the rendering submitted by the applicant, titled Venetian Village.

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

Ken Welsh, representing the applicant, agreed with staff's presentation and said that they are asking for a minor change in density. He added that the product originally proposed was not as marketable as they thought it would be. The new development is more compatible with products in the area.

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Mr. Welsh confirmed for Council Member Pat Poole that these units, as well as the units proposed in the original development, will be sold rather than rented. Mrs. Poole commented that, in her opinion, 45 additional units is not a minor change in density. Mr. Welsh concluded by agreeing with the conditions.

There were no other comments from the public.

Moved by Contreras/Walker for approval of Ordinance No. 2003-94.

Mrs. Poole referenced the Environmental Impact Assessment and stressed that it is important that the site be checked during the nesting season. She pointed out that this development provides for 116 units, which is 45 more than what was previously approved. Mrs. Poole elaborated on her concerns as follows: the additional units will add to the congestion and eliminate green space; the environment is being sacrificed so that 45 more condominiums can be sold; the plan does not indicate the size of the pool and spa; there is no playground, tennis court or volleyball area; the plan does not show parking in the pool area; and there will be additional trips on our roadways, which are already congested. She concluded by asking how this development will provide for the public health, safety, welfare, economic order and quality of life.

Mayor Buckley said that the proposed density of 10.5 units per acre is within the allowed density of 15 units per acre. He added that Council is required to approve a development if it meets the requirements in our Code.

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

10. ORDINANCE NO. 2003-95 (CU-2003-16/SP-2003-29) TESTIMONY BAPTIST CHURCH: (First Reading/Public Hearing) An ordinance granting a conditional use and site plan approval to allow a church on a two-acre parcel in an R-1B (Single-Family Residential) zoning district, located on the north side of Florida Avenue, east of Myrtle Street and west of Lipscomb Street. (Owner/Applicant – Testimony Baptist Church) (Representative – Steve Holmes) (P&Z Board – 11/06/03)

Attorney Gougelman read the ordinance by title. Mrs. Dittmer briefed Council. The proposed church will be 6,000 square feet with an expansion area for another 5,000 square feet. A total of 111 parking spaces is proposed, with 40 of those being unpaved with a hard stabilized surface. Access will be provided to the site from Myrtle Street. The Planning and Zoning Board unanimously recommended approval subject to the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the Engineering Department and the 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

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substantial change includes, but is not limited to: 1) a decrease in the primary building setbacks from side lot lines; 2) the addition of a driveway not shown on the site plan; or 3) any increase in building height not permitted by City Code, Appendix B, Article XVIII (9).

- 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 retention areas shall be shifted whenever possible to preserve trees.
- c. The proposed building shall be substantially consistent with the elevations submitted by the applicant titled Testimony Baptist Church, dated October 31, 2003.

There were no disclosures by Council.

Mrs. Poole said she is pleased to see that a church is being developed on this property rather than homes on 50' lots.

Mayor Buckley opened the public hearing.

Pastor Steve Holmes said that he is excited about this project for his church. He added that he agrees with the conditions.

Moved by Walker/C. Palmer for approval of Ordinance No. 2003-95. Motion carried unanimously.

11. ORDINANCE NO. 2003-96 (CU-2003-17) INDIAN RIVER BEVERAGE CO.: (First Reading/Public Hearing) An ordinance granting a conditional use to allow a microbrewery on a 1.076-acre parcel in an M-1 (Light Industrial) zoning district, located at the southwest corner of Silver Palm Avenue and Waverly Place. (Owner – Jill Bazeley) (Applicant - Sutton Properties LLC) (Representative – Holeman Suman Architects, Inc.) (P&Z Board – 11/06/03)

The City Attorney read the ordinance by title and Mrs. Dittmer briefed Council. The site contains an existing 17,500 square foot building with 29 parking spaces. Access is already provided to Silver Palm and Seminole Avenues. The surrounding area is zoned M-1, with a mixture of commercial and industrial uses. The microbrewery will be for production of beer and cider for wholesale distribution and is an expansion of the current location on South Harbor City Boulevard.

The Planning and Zoning Board unanimously recommended approval of this request.

There were no disclosures by Council.

Vice Mayor Cheryl Palmer recalled that there were concerns about odor when the current location opened several years ago. She asked if we have experienced any problems.

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Mrs. Dittmer said she does not believe we have received any complaints about the existing brewery.

Tom Wood, Holeman Suman Architects, agreed with the staff presentation. He confirmed that they will be brewing Ybor City beer at the new location.

Moved by Poole/Contreras for approval of Ordinance No. 2003-96. Motion carried unanimously.

Moved by Walker/Contreras for Council to recess and for the Downtown Melbourne Community Redevelopment Agency to convene. Motion carried unanimously.

12. COUNCIL ACTION RE: Phase III Historic Lighting and Streetscaping Project

a. Downtown Melbourne Community Redevelopment Agency Plan Amendment

Mrs. Dittmer reviewed the project. The Downtown Melbourne Community Redevelopment Agency Advisory Committee reviewed the original plan and amendments. The Committee is recommending a Phase III Lighting and Streetscaping project that will assist in meeting some of the original and new goals for the district.

There were no comments from the public.

Mrs. Poole said that when the original plan was developed, there was a concern about the condition of sidewalks in the Downtown area – especially the side streets like Waverly and Vernon. This issue was supposed to be addressed in the plan.

Mrs. Dittmer said that the tax increment financing funds are not intended to be used for maintenance. Mrs. Poole said that the sidewalks she is referring to cannot be “maintained” or repaired. She said that they are in need of replacement, along with landscaping.

Moved by Contreras/C. Palmer for approval of the Community Redevelopment Agency plan amendment. Motion carried unanimously.

Moved by Contreras/Walker for the City Council to reconvene for the remainder of the agenda. Motion carried unanimously.

b. ORDINANCE NO. 2003-97 (LDR-2003-08/FOC-2003/03): (First Reading) An ordinance amending Section 10-101, City Code to provide for a redevelopment plan amendment to include the Phase III Historic Lighting and Streetscaping Project. (P&Z Board – 11/06/03)

The City Attorney read the ordinance by title.

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From the agenda report: This is the first reading of an ordinance to amend the 1982 Downtown Melbourne Redevelopment Plan to include a major lighting and streetscaping project for the Downtown area. The project is expected to cost approximately \$1.7 million and can be bonded with approval of the Downtown Community Redevelopment Agency. The bond can be repaid with revenue from the tax increment financing district.

Moved by Contreras/Buckley for approval of Ordinance No. 2003-97.

Council Member Richard Contreras asked the timeline for Phase III. Mrs. Dittmer said that construction is six – eight months away.

Mr. Contreras said that he believes the advisory committee needs to look at the sidewalk issue. Each year the sidewalks become more of a hazard. He added that any continuing redevelopment activities would meet with resistance until that issue is dealt with.

Following a brief discussion about use of tax increment financing funds, Attorney Gougelman said that staff will follow up with a written memorandum discussing the issue at greater length. He added that the State Statutes provide general guidance. And, with CRA monies, the statutes look more towards developing new projects. This is not an absolute rule and there are some caveats.

Mrs. Palmer asked if the bond repayment money will use all available funding in the Downtown Fund. Mrs. Dittmer said there will still be an amount of usable cash. Mrs. Palmer said that upcoming budgets need to prioritize sidewalks in Downtown Melbourne. Mr. Contreras recommended that the advisory committee return with a more robust plan, which would include a plan for sidewalks from start to finish.

Mr. Schluckebier said that the message regarding sidewalks is being heard loud and clear; staff will take the direction of Council.

The question was called. Motion carried unanimously.

13. ORDINANCE NO. 2003-98: (First Reading) An ordinance amending Chapter 32, City Code to require annexation of property seeking water or sewer service.

Attorney Paul Gougelman read Ordinance No. 2003-98 by title. City Engineer Howard Ralls briefed Council. This is the first reading of an ordinance amending Chapter 32 of the City Code, which defines the requirement that owners of unincorporated property seeking water and sewer service petition for annexation into the City.

There are a number of arguments supporting the requirement that owners of contiguous property annex for water and sewer service or for non-contiguous property, pre-annexation agreements be signed.

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- Resolution No. 86, adopted by City Council on June 22, 1971, states that a petition for annexation be required of properties contiguous to the City limits that are seeking a water or sewer extension.
- The 2001 Joint Planning Agreement with Brevard County states that the City may at its discretion require annexation or a pre-annexation agreement as a condition of providing water or sewer service in defined areas.
- The State Attorney General has issued an opinion that a municipality is not required to provide water or sewer service outside its boundaries and that a municipality may refuse to provide such services until the property is incorporated into the municipality.
- The Florida Supreme Court issued an opinion (in 1996) that a municipality has no duty to provide services to unincorporated land within its service area, and concluded that the city may condition receiving sewer service on annexation. The City Attorney is of the opinion that this case would also apply to water.

Accordingly, staff is recommending the adoption of annexation requirements. The Joint Planning Agreement defines a Melbourne Urban Service Area. The annexation requirements can apply within that area.

Water service is already provided in some subdivisions located within the Urban Service Area. The water systems serving those subdivisions were installed by developers under the terms of their Water Utility Agreement with the City. Build-out on lots in those subdivisions would not be subject to the annexation requirements. All other development requiring a waterline extension or a new meter connection on an existing line within enclaves or the urban service areas (JPA) would be subject to the annexation conditions.

Mayor Buckley said that he received a call from County Commissioner Sue Carlson who was not able to attend this meeting but would be here at the next meeting. Commissioner Carlson would like to discuss an exception for three items.

Mrs. Palmer said she has had discussions with people in the Lake Washington area who have acreage and horses. The residents in that area want to continue with the same uses that they now enjoy living in the County. She said that she cannot support annexation by everyone because of the properties that have agricultural uses and acreage. The main reason they don't want to annex is because they are not allowed to have horses.

Mrs. Poole said she can see why people are concerned; however, the City should be able to address zoning in those areas. Mr. Contreras asked if an overlay district would allow for horses and agriculture uses.

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Attorney Gougelman said that Council could give staff direction as part of the adoption of this ordinance to develop appropriate agriculture zoning. He noted that a person would not have to stop agricultural activities on their property just because the property annexed. They would have a non-conforming use. However, one drawback to this is that banks don't like a non-conforming use when loaning money.

In response to Mr. Contreras, Mr. Gougelman said that he is sure some type of overlay concept could be implemented. He pointed out that if the City annexed and never assigned City zoning, it would continue to carry the County zoning. This is not a good way to do business; however, it would provide an interim measure until the City adopted agricultural zoning. Mr. Contreras said that he would prefer to have the agricultural zoning in place.

Mr. Schluckebier said he would ask staff to look at the agricultural zoning issue. He commented that the City is not trying to do anything that would alter or change the use of property. This is about ensuring that we don't end up forming a wall around the City.

A brief discussion followed and several members recommended that this item be further discussed with a full Council present.

Moved by Buckley/C. Palmer to postpone this item until the next meeting (December 9).

Mr. Contreras said he spoke with Commissioner Sue Carlson before the meeting and there are three areas of concern that she would like to address.

The question was called. Motion carried unanimously.

14. ORDINANCE NO. 2003-99: (First Reading) An ordinance amending Chapter 32, City Code to provide for an increase in water connection charges.

Mayor Buckley reported that staff has asked that this item be postponed until the December 9 meeting.

15. COUNCIL ACTION RE: Mayor and Council salaries.

Mrs. Poole stated that this item needs a full Council for discussion.

Moved by Poole/C. Palmer to postpone this item until the next meeting (December 9).
Motion carried unanimously.

16. COUNCIL ACTION RE: Historic Preservation Committee – appointment of one regular member.

Note: This is Mrs. Hand's appointment to the committee.

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Moved by Contreras/Poole to postpone this item until the next meeting (December 9) so that Mrs. Hand can be present. Motion carried unanimously.

17. COUNCIL DISCUSSION RE: Discussion regarding enforcement of current Sign Code as it relates to banners and murals and conceptual ordinance relating to signs in the City rights-of-way.

Code Compliance Director Al Beyer briefed Council on this item and noted there are two issues.

1) *Enforcement of the current Code as it relates to banners and murals.* In the wake of the September 11 terrorist attacks, the City administratively allowed patriotic banners, pennants and murals, temporarily exempting them from the Sign Code. As we begin to emerge from this extraordinary event, we are revisiting the placement of these displays. Code Enforcement employees are making contact with business owners to inform them what will be required to bring these displays into compliance with the Code. The first step included hand delivery of a courtesy letter. If corrective measures are not completed within 10 days, a formal citation will be issued.

Mr. Beyer displayed pictures of patriotic pennants, patriotic banner (“We Support Our Troops”), two patriotic murals, and numerous flags attached to car antennas. He also showed a picture of a retail store displaying two checker flags and one American flag, which is in compliance with our Code.

Mr. Beyer commented on the murals and stressed that the City’s Sign Code is content neutral. The murals are in violation of the current Code because they exceed 10% of the wall area and/or exceed the number of signs allowed on a site.

He concluded by saying that Code Compliance will continue to work with local businesses to help them understand what is permitted by our Sign Code. He informed Council that patriotism may be displayed by the use of flags, special activity permits and portable signs.

Mrs. Palmer asked why the two checker flags and one American flag are considered okay. Mr. Beyer said the Code allows a site to display four flags, regardless of the content.

Attorney Gougelman added that “content neutral” is the key to our City Code.

Mr. Contreras asked for additional information regarding the patriotic banner. Mr. Beyer said that the Code does not allow any banner to be placed, unless a special activity permit has been issued. (Special activity permits limit the number of days per year; banners may not be placed in perpetuity.)

Mr. Beyer addressed the second issue as follows:

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2) *Proposal for conceptual ordinance, which would prohibit all signs in the City rights-of-way.* The Code Compliance Division has been trying to address a tremendous amount of clutter in the City rights-of-way. Staff is currently examining a proposal to prohibit all signs in the rights-of-way, including real estate, political and temporary signs.

Mr. Beyer displayed pictures showing the number of temporary signs and snipe signs at various intersections in the City. He also displayed a photograph showing an intersection without sign clutter. The final photograph shows several events being advertised on the Auditorium event board.

Mr. Contreras referenced the illegal and snipe signs placed at the various intersections. He asked if staff makes contact with people who posted the signs since telephone numbers are listed on most. Mr. Beyer displayed a current list, which shows 69 permitted signs in the City rights-of-way. He explained that by the time the Code personnel review the list at each intersection, time does not allow for more than the removal of the signs.

Mrs. Poole commended Code Compliance for proposing this item. She said that the problem is getting worse and added that there is plenty of private property available for the placement of political signs.

Mrs. Palmer said that the list referenced by Mr. Beyer shows that most of the signs are for City/County events or for events held on City/County property. She said that she does not like the idea of prohibiting something that is temporary. She recommended that we examine reducing the number of signs allowed. And, perhaps snipe signs – signs stapled to telephone poles – can be addressed through some type of penalty.

Attorney Gougelman said that when we start saying “we don’t like garage sale signs, but we like signs that advertise civic events” we start to get into the regulation of content. He referenced case law, which allows the City to regulate placement of signs in the rights-of-way but does not allow the City to regulate the content of those signs.

Responding to Mrs. Palmer, Mr. Schluckebier said that Mrs. Poole asked for the issue of murals, banners and enforcement of the current Code to be placed on the agenda. Staff took the initiative to place the discussion about a concept ordinance on the agenda.

Mrs. Palmer said that in a political race, the incumbent has the advantage of knowing people and therefore being able to place signs on private property. If we prohibit political signs in the rights-of-way, it will take away the level playing field. She suggested staff be more conscientious about going after people who don’t remove their signs.

Mrs. Poole said that there is no problem when people run for election – most realtors will allow people to place their signs. She added that it is important for us to keep the signs out of our rights-of-way. This has been neglected and it needs to be addressed.

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Mr. Schluckebier stressed that with the first issue, we have to be content neutral; space is all we regulate. Council's decision on banners, murals, etc. will ultimately protect the City. With regard to the second issue, the decision has to be made whether Council wants any signs in the rights-of-way. If Council is okay with some signs, then we have to be okay with all signs.

Mrs. Palmer added that this is clearly two separate issues. The first issue is simply enforcement of the current Code.

Recessed: 8:19 p.m.
Reconvened: 8:30 p.m.

Mr. Schluckebier asked Council if it wished to direct staff regarding development of a concept ordinance. Mayor Buckley recommended the City Manager submit something for review; however, he added that he has heartburn with this proposal. The City Manager said if it is Council's desire to leave well enough alone, it will save a lot of staff time (in developing an ordinance).

Following a brief discussion, Mayor Buckley asked the City Manager to return with this item when there is a full Council for discussion.

18. COUNCIL DISCUSSION RE: Code Enforcement Final Orders and Liens.

Attorney Gougelman briefed Council. A recent Attorney General opinion is causing local governments to revise their procedures regarding Code liens. There will be a limited period of time – the period between the Code Board levying the fine and the order imposing the fine being recorded – that the Code Board will have the jurisdiction and power to reduce the fine. Once the order is recorded in the public records, the board will lose its ability to reduce the fine and according to the Attorney General, only the City Council will be able to reduce the fine.

The new process will assume that the City Council believes that the Code Board has been appointed to take care of all Code Enforcement matters. In order to comply with the Statute and keep the City Council out of Code Board business, the following would occur: If a person wants their fine or order released, the Code Board would conduct a hearing and issue a recommended order. That recommended order would go on the City Council consent agenda. By vote of Council, the item could be removed from the consent agenda and a hearing conducted. If the item were not removed, the applicant would not be able to receive a second hearing before Council and the recommended Code Board order would be approved.

In response to Mrs. Palmer, Attorney Gougelman said that the Code Board is now making final decisions. The Attorney General is saying that is not appropriate and, once the order is recorded, Council must make those determinations about reduction of fines and release of liens. The process being recommended is that the Code Board would

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continue to hear the case, but would enter a recommended order which would be forwarded to Council.

Mrs. Palmer asked if the City Council would receive details about the item. Mr. Gougelman said that he believes Council would have to. He added that this process will force the Code Board to be more careful and detailed in its recommendations to reduce a fine or release a lien.

A brief discussion followed regarding the process.

Mr. Schluckebier said that the process outlined will prevent Council from taking on a new workload – Code Enforcement hearings. He recommended that Council be narrow in its decision to remove recommended Code Board orders from the consent agenda.

Following a brief discussion, Council agreed that Attorney Gougelman should memorialize this procedure by resolution (to appear on a future agenda).

19. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

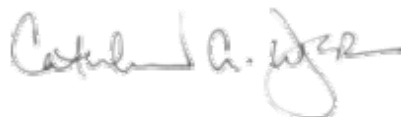
Mr. Schluckebier updated Council on an issue with the Police union about overtime and the scheduling of officers on holidays. The Police Chief has opted to reduce the number of people scheduled to work holidays – this is a basic management right in addition to the Chief being under pressure to reign in the cost of overtime and to use our resources sparingly but effectively.

Mrs. Palmer asked the City Manager to review the color of the new fire station on Hibiscus Boulevard.

20. ADJOURNMENT

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

The meeting adjourned at 9:07 p.m.



City Clerk – 12/4/2003

Approved by City Council: 12/9/2003