

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

1. Pastor Norm Gleason, Mount Moriah Missionary Baptist Church, gave the invocation.
2. Pledge of Allegiance.
3. Roll Call.

Present:	John A. Buckley	Mayor
	Richard Contreras	Council Member, District 1
	Ed Palmer	Council Member, District 2
	Pat Poole	Council Member, District 3
	Grace Walker	Council Member, District 4
	Cheryl Palmer	Vice-Mayor, 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
	Cindy Dittmer	Planning & Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

None.

5. APPROVAL OF MINUTES – November 25, 2003 Regular Meeting

Moved by C. Palmer/Contreras for approval. Motion carried unanimously.

6. CITY MANAGER'S REPORT

City Manager Jack Schluckebier reported that the City Attorney has asked for an item to be added to the agenda relating to the previously approved Wal-Mart site plan.

Moved by Hand/Walker to add Item 24.1 to the agenda. Motion carried unanimously.

7. PUBLIC COMMENTS

None.

UNFINISHED BUSINESS

8. ORDINANCE NO. 2003-91 (A&V#268): (Second Reading/Public Hearing) An ordinance to abandon and vacate the north 0.5 feet of a 25-foot wide public right-of-way along the south (rear) lot lines of Lots 1 and 2, Block G, Indian River Bluff Subdivision, 203 East Avenue B. (First Reading – 11/18/03)

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City Attorney Paul Gougelman read Ordinance No. 2003-91 by title. There were no disclosures by Council and no comments from the public.

Moved by Hand/Contreras for approval of Ordinance No. 2003-91. The roll call vote was:

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

Nay: None

Motion carried unanimously.

9. ORDINANCE NO. 2003-92 (A&V#269): (Second Reading/Public Hearing) An ordinance to abandon and vacate a 15-foot wide canal maintenance easement on Lot 28 in the Rio Lindo Subdivision, Third Addition, 2294 Riverside Drive. (First Reading – 11/18/03)

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

Moved by Walker/E. Palmer for approval of Ordinance No. 2003-92. The roll call vote was:

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

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2003-93 (CU-2003-14/SP-2003-25) UNIVERSITY VILLAGE AT MELBOURNE: (Second Reading/Public Hearing) An ordinance granting a conditional use and site plan approval to develop property zoned C-1 (Neighborhood Commercial) for multi-family use on a 10.4-acre parcel, located on the south side of Florida Avenue, west of Babcock Street, and east of Dairy Road. (Owner – University Village at Melbourne, LLC) (Applicant/Representative – Mr. Guy Poux) (First Reading – 11/18/03)

Attorney Gougelman read Ordinance No. 2003-93 by title. There were no disclosures by Council and no comments from the audience.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2003-93. The roll call vote was:

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

Nay: None

Motion carried unanimously.

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11. ORDINANCE NO. 2003-94 (CU-2003-18/SP-2003-30) VENETIAN VILLAGE: (Second 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) (First Reading – 11/25/03)

The City Attorney read Ordinance No. 2003-94 by title. There were no disclosures by Council. Mayor Buckley opened the public hearing. There were no comments.

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

Council Member Ed Palmer said that the previous conditional use on this property provided for 71 units, and the proposed conditional use provides for 116 units. He asked the rationale for the 45-unit increase.

Planning & Economic Development Director Cindy Dittmer stated that the applicant considered platted townhomes. Following a market study, they decided to change to a condominium type development, which won't be platted. The change in style results in an increase in the number of units.

Council Member Pat Poole said that she is opposed to this request and added that she has a number of questions.

Mayor Buckley asked the applicant if he would like to address Council.

Ken Welsh, representing the applicant, responded to Council's questions as follows: the original 71 units were larger; the new site plan does not increase the size of the footprint; the new plan provides for a two-story development with single car garages instead of double car garages; the pool is approximately 20' x 30', which is a typical size for this type of development; the development will be more conducive to seniors and young professionals; the units will be 1,300 – 1,500 s.f.; the garage and the driveway will allow enough room for two cars to be parked; there will be limited community parking; and parking will be available at the swimming pool.

In response to Mrs. Poole, Attorney Gougelman said that the previous conditional use will be repealed if this ordinance is approved (separate Council action to repeal the first conditional use won't be required).

Mrs. Poole asked if trees will be located around the perimeter as depicted on the rendering. Mr. Welsh said that trees will be provided per City Code. Attorney Gougelman pointed out condition "e", which requires the development to be consistent with the rendering. Mr. Welsh said that the rendering depicts how the structure will look; however, he can't guarantee how the trees will look.

Council Member Grace Walker stated that she can't vote for this item.

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The question was called. The roll call vote was:

Aye: Contreras, Hand, C. Palmer and Buckley

Nay: E. Palmer, Poole, and Walker

Motion carried.

12. ORDINANCE NO. 2003-95 (CU-2003-16/SP-2003-29) TESTIMONY BAPTIST CHURCH: (Second 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) (First Reading – 11/25/03)

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

Moved by Poole/E. Palmer for approval of Ordinance No. 2003-95. The roll call vote was:

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

Nay: None

Motion carried unanimously.

13. ORDINANCE NO. 2003-96 (CU-2003-17) INDIAN RIVER BEVERAGE CO.: (Second 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.) (First Reading – 11/25/03)

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

Moved by Poole/E. Palmer for approval of Ordinance No. 2003-96. The roll call vote was:

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

Nay: None

Motion carried unanimously.

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14. ORDINANCE NO. 2003-97 (LDR-2003-08/FOC-2003/03): (Second Reading/Public Hearing) 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. (First Reading – 11/25/03)

The City Attorney read Ordinance No. 2003-97 by title. There were no comments from the public.

Moved by Contreras/Hand for approval of Ordinance No. 2003-97. The roll call vote was:

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

Nay: None

Motion carried unanimously.

15. ORDINANCE NO. 2003-98: (First Reading) An ordinance amending Chapter 32, City Code to require annexation of property seeking water or sewer service. (Postponed – 11/25/03)

The City Attorney read the ordinance by title. Mayor Buckley asked Mrs. Dittmer to discuss the zoning issue. Mrs. Dittmer reported that she looked at the County zoning in the Lake Washington (northwest Melbourne) area. There are several County zoning categories that are more rural than Melbourne's; however, the City could adopt similar districts that would allow larger acreage and permit horses.

Mayor Buckley reported that at the last meeting, the question was raised about whether we could have zoning that would allow horses for properties in this area that would annex.

Mr. Palmer said that our Zoning Code should change in order to be flexible and accommodate people who are annexing. Vice Mayor Cheryl Palmer stated that she would like to see something to that effect in this ordinance. Mr. Schluckebier noted that this ordinance does not affect land use or zoning – it directly relates to the Utilities Chapter of the City Code. He added that if it is Council's pleasure to work in that direction, the effective date of this ordinance could be 90 or 180 days to allow for that.

Mrs. Palmer asked for an update of the meeting held with County Commissioner Sue Carlson. Council Member Richard Contreras said that he and the City Manager met with Commissioner Carlson. He noted that Ms. Carlson agrees that this is the right thing to do for the citizens in this area, as long as they agree.

Mrs. Palmer asked if a section could be added to this ordinance providing assurance about the zoning issue. Attorney Gougelman recommended Council consider adding a new Section 5, to read: *"That toward the goal of providing consistent and compatible annexation policies, City staff is directed to develop agricultural zoning classifications similar to County agricultural zoning designations in use in northwest unincorporated Melbourne. These classifications are to be scheduled for City Council public hearing by not later than May 31,*

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2004.”

Moved by C. Palmer/E. Palmer to add a new Section 5 to the ordinance. Motion carried unanimously.

Moved by Contreras/E. Palmer to approve Ordinance No. 2003-98, as amended. Motion carried unanimously.

16. ORDINANCE NO. 2003-99: (First Reading) An ordinance amending Chapter 32, City Code to provide for an increase in water connection charges. (Postponed – 11/25/03)

The City Attorney read the ordinance by title.

Moved by Contreras/Hand for approval of Ordinance No. 2003-99.

Council Member Loretta Hand asked if this ordinance is going to put meter readers out of a job. Mr. Schluckebier replied no.

Utilities/Public Works Director Robert Klapproth reported that the City currently has six meter readers. As this program is phased in, we won't replace readers (who transfer, resign, etc.) and we won't have to hire additional readers.

Mr. Palmer asked whether we have assurance about the dependability of the system.

Mr. Klapproth replied that the City participated in a two-year pilot program. Staff is very familiar and comfortable with the new system.

A brief discussion followed about the automated meter reading process.

The question was called. Motion carried unanimously.

NEW BUSINESS

17. COUNCIL ACTION RE: Bid award for construction of Trailer Haven Waterline Improvements, Project No. C03309, Young's Communication Co. Inc., Melbourne, FL - \$195,935.30 and budget transfer of \$10,000 from 763990.

City Engineer Howard Ralls reviewed the agenda report. The recommendation is to award the waterline replacement contract to Young's Communications Co., Inc. in the amount of \$195,935.30 and transfer of \$10,000 from the Water & Sewer Miscellaneous Projects fund to this project budget.

Mr. Ralls responded to general questions about the project.

Moved by Walker/Poole for approval of the recommendation. Motion carried unanimously.

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18. COUNCIL ACTION RE: Contract award for Swift Street Drainage Improvements, Project No. 02900, William Kriston & Sons, Inc., Winter Haven, FL - \$195,107.

Mr. Ralls reviewed the agenda report. The recommendation is to approve the construction contract with William Kriston & Sons, Inc. in the amount of \$195,107 and that the \$58,345 balance of the Neighborhood Development Program Park pond project budget and \$6,862.00 in savings from the Stormwater Master Plan project budget be transferred to the Swift Street Drainage Improvement project.

Mr. Ralls responded to Council's questions regarding the project.

Moved by E. Palmer/Hand for approval of the recommendation. Motion carried unanimously.

19. CONSENT AGENDA:

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

The City Manager responded to several questions about the consent agenda; however, no items were removed. Fire Chief Walt Chamberlin elaborated on the lift assist fee provided for in Resolution No. 1853. Director of Finance Michele Ennis answered questions about Resolution No. 1855.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Purchase of radios, batteries, antennas, and supplies, Communications International, Inc., Vero Beach, FL - \$127,198.37 and transfer of \$15,605 from the General Fund Contingency Account.
- b. Resolution No. 1852: A resolution to implement FY 2002-2003 Fourth Quarter Budget Review recommendations.
- c. Resolution No. 1853: A resolution providing for miscellaneous Police and Fire service fees.
- d. Resolution No. 1854: A resolution authorizing the issuance of Downtown Community Redevelopment Agency Bonds, Series 2003.
- e. Resolution No. 1855: A resolution authorizing the issuance of Public Service/Utility Tax Revenue Bonds, Series 2003.
- f. Resolution No. 1856: A resolution authorizing the issuance of Gas Tax Revenue Bonds, Series 2003.

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Recessed: 7:46 p.m.
Reconvened: 7:58 p.m.

20. ORDINANCE NO. 2003-100 (ED-2003-04): (First Reading) An ordinance granting an Ad Valorem Tax Exemption for a period of five years totaling an estimated \$161,916.25. (Owner/Applicant – Avidyne, Corp.)

City Attorney Gougelman read the ordinance by title and Mrs. Dittmer reviewed the agenda report.

Gus Kyriakos, Director of Engineering, Avidyne Corporation, responded to Council's questions about Avidyne Corporation. He noted that the facility will be strictly for high tech research/engineering development. Additionally, they require a hangar for their work. They plan to use contract manufacturers. Avidyne has not made the decision about where to locate. They are looking at the incentives being offered. He noted that they received a good incentive from the Airport and the Brevard County Commission gave them favorable consideration at its last meeting.

Continuing, Mr. Kyriakos said they expect their decision to be made in January. They have a facility in Lincoln, Massachusetts and a facility in Palm Bay. They are considering expansion in Boulder, Colorado or in Melbourne. There are numerous factors involved in selecting a site, including incentives, whether people can be attracted to the area, cost of living, etc.

Mrs. Poole asked if Avidyne has talked to Palm Bay about expansion. Mr. Kyriakos said no because their primary goal is to be located at an Airport. They need to construct an engineering and hangar facility. He confirmed that Boulder has an airport.

Mrs. Hand stated that the City should make every effort to offer incentives to encourage business/industry to locate in Melbourne. She added that this is the best decision for our economic growth and development.

Mr. Contreras asked how the airport will be used. Mr. Kyriakos said that they have to flight test their equipment, and they have a small fleet of airplanes, four or six seaters, for this purpose. Mr. Contreras asked for an example of the equipment. Mr. Kyriakos said they develop instrumentation – avionics, radio, instrument landing system, navigation system, etc.

Mr. Kyriakos confirmed for Mrs. Palmer that they do not use military type aircraft.

Mrs. Palmer said that a new industry with new jobs – without a negative impact on the community – is a blessing. Many communities in the United States are experiencing high unemployment and minimum wage jobs. She agreed that we should welcome clean industry.

Moved by Contreras/Hand for approval of Ordinance No. 2003-100.

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Mrs. Poole read from the agenda report and agenda backup material. She pointed out that there are differences in the information supplied by the applicant, the Economic Development Commission (EDC) and the Property Appraiser. She added that she does not know if the EDC enhances its figures. Additionally, she said she would like to know what incentives the Melbourne International Airport has offered.

Continuing, Mrs. Poole asked the City Attorney to explain the State Statute as it relates to expansion of a business and a new business. She added that she would not consider "Palm Bay" as an expansion and noted that the City previously turned down an exemption for a Brevard County company to relocate within the County. Attorney Gougelman said this should be viewed as a business expansion in Florida. The company will receive credit for bringing new jobs into this marketplace.

Mrs. Poole pointed out that the City has already granted previous tax abatements in the amount of \$81,212 per year. The Avidyne exemption will increase this amount. The taxes from these corporations should be going into our General Fund. And, granting tax exemptions is not fair to businesses that are already established in Melbourne. The new businesses will add to traffic congestion, overcrowded school system, and services.

Mr. Contreras pointed out that the return on investment far exceeds the tax exemption. One individual filling a new job will buy a home, purchase goods and services, etc., which puts tax dollars and revenue into the General Fund. Technicians earning \$40,000 - \$50,000 per year is significant. This is one of the best investments the City of Melbourne could offer in terms of a company expanding onto City property and he is in full support.

Mr. Palmer said he is also in full support. Tax abatement is a tool to help with new industry and the returns are greater than the cost. New jobs are added and the economy is improved. If a company does not meet the standards and the criteria, the tax abatement can be rescinded.

Mayor Buckley stated that he is also in favor of the program. He added that if the company receiving the abatement does not meet the criteria, they don't receive the tax abatement. The exemption is based on performance.

For clarification, Mr. Schluckebier pointed out that the ordinance specifies that we will use the Property Appraiser's figures, which are more conservative. He added that the City Code requires an annual report for verification. Additionally, he noted that this company is clearly shopping for a site and has not made its decision about location.

Mrs. Palmer asked that the annual reports submitted by the companies receiving tax exemptions be shared with Council.

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

21. COUNCIL ACTION RE: Request by Hamilton Boone for an amendment to the Sign Code to allow the display of patriotic banners during wartime.

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This item was withdrawn by Mr. Boone.

22. COUNCIL DISCUSSION RE: Discussion regarding slot machines and games of chance versus games of skill.

The following is an excerpt from a memorandum distributed by the City Attorney's Office: *This memorandum will brief the City Council with regard to a new fad – "games of skill for redemption." These "games of skill" sound suspiciously like gambling. We are reporting on this issue, since the council or the City Manger may wish to direct that further action be taken.*

Since July of 2003, the City's Planning and Economic Development Department and Occupational licensing division have been approached by many business people inquiring about the city's requirements for opening and operating "adult arcade centers" containing "games of skill for redemption."

Inquirers have presented city employees with glossy brochures advertising the "games of skill for redemption" as being video slot machines that an operator can control by pushing a button marked "skill." Proponents of these games argue that because the operator can control the outcome of the game, the games are games of skill, which are exempt from the gambling statutes under section 849.161, Florida Statutes, because they award tickets that can be redeemed for gift certificates rather than cash.

The question is whether pushing a button marked "skill" constitutes the application of skill for purposes of qualifying for the exemption under section 849.161, Fla. Stat., or whether the outcome of the game is a matter of chance. The Florida Attorney General issued an opinion in 1995 stating that "[T]he pushing of a button marked 'skill,' in and of itself, would not appear to constitute the application of skill for purposes of qualifying for the exemption contained in Section 849.161, Florida Statutes." Fla. AGO 95-27.

Apparently, the City of Melbourne is not alone in being targeted as a potential location for "adult arcade centers." Several counties and municipalities in Central Florida have issued occupational licenses for such "adult arcade centers" because their ordinances do not prohibit such arcades. Other jurisdictions, including Seminole County, the City of Casselberry, the City of Sanford and the City of Cocoa Beach, have adopted ordinances imposing a moratoria on the issuance of occupational licenses until such time as they are able to determine whether the machines are, in fact, games of skill. These jurisdictions are anticipating that the Florida Legislature will close the "games of skill" loophole in the gambling laws.

Within the past week, several of the arcades so licensed have been raided and the machines seized as gambling devices under section 849.16, Florida Statutes. None of those raids occurred in Brevard County, however.

During a November 5, 2003 telephone conversation with Wayne Holmes, Assistant State Attorney for the 18th Judicial Circuit, Mr. Holmes indicated that Norm Wolfinger's Office is monitoring the gambling prosecutions in other jurisdictions. Mr. Holmes stated that no

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raids or gambling arrests (for adult video arcades) have been made in Brevard County, even though three arcades are open and operating in Brevard County.

Mr. Holmes suggested that the City of Melbourne either adopt an ordinance imposing a moratorium on licensing adult video arcades until the City retains a gambling expert and revises its Code to address the licensing of adult video arcades (maybe the Florida legislature will act in the interim to close what has been referred to as the “Chuck E. Cheese” loophole in the gambling laws), or revise its occupational licensing procedures to require adult video arcade applicants to prove that their machines comply with the slot machine exemption in section 849.161, Florida Statutes.

To determine what, if anything, the Florida Legislature intends to do, the City Attorney’s Office telephone the office of Representative Mitch Needelman on November 5, 2003, and left a message that the City is interested in learning about the actions the Florida Legislature is taking to close the “games of skill” exemption to the gambling laws. On November 12, 2003, our office telephone Representative Thad Altman’s office, and learned from his staff that Mr. Altman is a member of the State’s pari-mutuel wagering committee. On November 13, 2003, Mr. Altman’s aide, Stephanie Eley, advised that the Florida Legislature have no plans to close the loophole. In fact, some members of the legislature are exploring whether gambling should be permitted in Florida.

To date, the City of Melbourne has issued one occupational license (issued on October 1, 2003) for an arcade amusement center called “Spinnerz Arcade” at 674 North Wickham Road, with the restriction that “all machines will comply with Florida State Statutes.” The occupational license was issued because the City of Melbourne’s Zoning Code allows indoor recreational facilities (including theaters, bowling alleys, arcades) in the C-2, C-P and M-1 zoning districts. No other ordinances, other than the occupational license that issues upon payment of the occupational license tax, apply to arcade amusement centers.

Attorney Gougelman briefed Council and stated that he is not looking for specific action. He added that in his legal opinion, he does not think we can place a moratorium on the issuance of occupational licenses. The State Statutes are very clear that an occupational license is simply a tax. As a tax, it must be assessed precisely. The City cannot deviate or make up rules.

Mr. Gougelman said that if we issue an occupational license to someone who is conducting an illegal activity, we are not prohibited from enforcing the law. He stressed that although some cities have adopted a moratorium, his recommendation is that we not do that. The State Attorney is taking a wait and see posture to determine how the courts will apply the prohibition of gambling to this type of equipment.

The City could join the State Attorney and wait and see, or the Police Chief could be directed to work with the State Attorney to devise a strategy. When our Police enforce the law the case is turned over to the State Attorney to prosecute. And, we won’t recommend that our Police Department move forward unless they feel comfortable that they will be fully supported by the State Attorney’s Office.

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Mr. Palmer said he would support the wait and see posture. He added, however, that there is not even a remote possibility that these will be considered games of skill. It is another way to introduce gambling under a different terminology.

Mr. Contreras asked if the municipalities that have enacted moratoriums been challenged. Mr. Gougelman said, to his knowledge, no; however, this is very new.

Mr. Contreras said that his concern is that once we have one of these establishments, it is Pandora's box. If we choose the moratorium route, albeit ill advised, we would be taking our chance in the court environment. He added that the current law is more than sufficient.

Mrs. Hand agreed that Council should be united and take a stand against this.

Mrs. Palmer commented that once more of these facilities open, it will be difficult to go in later and get them out. And, if organized crime is involved, there will probably be challenges at that point. She said she could support a moratorium and see if we are challenged on that.

Mayor Buckley said he would be opposed to taking any action until the State Attorney is willing to take action.

Mrs. Palmer said that if the City has a moratorium, a business might look for the place of least resistance to open.

Mr. Schluckebier said that Council may wish to seek an Attorney General Opinion on this issue – the enforceability of enacting a moratorium.

Attorney Gougelman clarified that the State Attorney is not saying that he is unwilling to take action. Rather, he is saying that sometimes haste makes waste. He repeated that the Police Chief should be instructed to work with the State Attorney on an approach. He agreed with the City Manager's suggestion to seek an Attorney General Opinion on the moratorium.

Mrs. Palmer said she is very concerned because we have no idea about the lobbying going on in Tallahassee. In other states, organized crime has a grasp and we don't know if that would happen here. She stressed that sometimes people take the point of least resistance. If we do not resist, they will come in.

Mrs. Walker noted that the Police Chief is present. She recommended that we have him contact the State Attorney.

Police Chief Don Carey said that he has a good relationship with the State Attorney; he would be more than happy to sit down and discuss this issue with him. He noted that the key lies in whether there is probable cause for an arrest. And, he is not sure how many

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times a skill button can be pushed with no wins. Clearly, a scientific evaluation would be required. This is why a wait and see attitude has been taken.

Mayor Buckley asked Council if it would be satisfactory to have the Police Chief talk to the State Attorney. Mr. Contreras said he supports a moratorium and conveying our position to the Brevard Legislative Delegation.

Mr. Palmer cautioned about jumping the gun and enacting a moratorium. Mrs. Palmer said that waiting allows time for more businesses like this to open.

Moved by C. Palmer/Walker to enact something now, have the Police Chief talk to the State Attorney and send a letter to the Brevard Legislative Delegation.

Mrs. Palmer clarified that “enacting something now” means enacting a moratorium against the issuance of occupational licenses for amusement arcades with games.

Attorney Gougelman said that we could administratively put this into effect now, although it is fraught with the question of legality. In order to formalize the moratorium, an ordinance will return in January.

Following a brief discussion, the maker/seconder said that requesting an Attorney General Opinion is also part of the motion.

Mayor Buckley asked if everyone understood the motion. Mrs. Poole said no. Mrs. Palmer stated that as of tonight, we will halt issuing occupational licenses (for this type of business) and tomorrow staff will proceed with the remainder of the items.

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

23. COUNCIL ACTION RE: Board Appointments

- a. Building Board of Adjustment and Appeals - appointment of two alternate members

Moved by E. Palmer/C. Palmer to reappoint Clayton Bennett and Leon D. Leash. Motion carried unanimously. (12/14/2003 – 12/13/2005)

- b. Historic Preservation Committee – appointment of one regular member. (Postponed – 11/25/03)

Mrs. Hand appointed James Luce. Moved by Hand/E. Palmer to appoint James Luce to the Historic Preservation Advisory Committee. Motion carried unanimously.

- c. Planning & Zoning Board - appointment of one regular member

Mrs. Poole said that misinformation was provided at the November 18 meeting on this item. There was a motion to appoint the first alternate, Hank Lauritsen, however before

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the vote was taken Mrs. Palmer reported that “she had occasion to meet Mr. Lauritsen and he stated to her that he will vote nay on everything that comes before him on the Planning and Zoning Board.” Mrs. Poole added that she talked to Mr. Lauritsen about this. Mr. Lauritsen said he talked with Mrs. Palmer at a polling place during the referendum on the one-cent sales tax – he supported the tax and Mrs. Palmer did not. Mr. Lauritsen has denied saying that he would vote against everything.

Mrs. Poole stated that Council should not overlook a volunteer member who has faithfully served for five years.

Moved by Poole/E. Palmer to appoint Hand Lauritsen to replace Scott Lamb on the Planning and Zoning Board.

Mrs. Palmer said that what she previously reported is correct; however, she noted that she is not here to oppose him in this appointment. She added that she commends Mr. Lauritsen for his volunteer service.

The question was called. Motion carried unanimously. (12/9/2003 – 12/12/2004, unexpired three-year term)

Mayor Buckley called for nominations for the alternate member vacancy.

Moved by Contreras/E. Palmer to appoint Manuel Rodriguez. Motion carried. Mrs. Palmer voted nay. (12/9/2003 – 1/24/2006, unexpired three-year term)

Council considered Item 24.1 before Item 24.

24. COUNCIL ACTION RE: Mayor and Council salaries. (Postponed – 11/25/03)

From the agenda report: During the recent budget adoption process, there were questions raised about the adequacy of the Mayor and Council salaries. The agenda package contained a memo from Amy Elliott providing some comparative and historical information as well as remedies to address this issue squarely in the future.

The Charter provides:

- Council should set pay by ordinance.
- Pay should be compatible with comparable cities.
- Changes have a delayed effect and begin only after the next regular election.

The City Code currently states that these salaries will be reviewed every five years and fixed by a vote of the Council. The last adjustment was in November 2000, which provided an increase from \$7,200 to \$9,000 for the Mayor and an increase from \$5,200 to \$6,500 for the Council Members. The former salaries were in place since at least 1973. While an improvement, the November, 2000 adjustment did not address the effect of inflation, as shown in the analysis.

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It is recommended that Council establish updated baseline salaries to be effective with the commencement of terms of members elected at the next election (November 2004) and provide for ongoing biennial increases based on similar increases as are provided to general employees, however made effective pursuant to the timing set out in the Charter. Such an adjustment can be accomplished by an amendment to the City Code.

Mrs. Poole discussed her concerns as follows: Melbourne Council Members are the highest paid in the County; Melbourne's salaries should not be compared with the School Board and the County Commission because the requirements are not the same; our volunteer board members work long hours with no pay because they are dedicated; Council salaries should not be based on full time employees' salaries; it is ludicrous to think that salaries should have increased 304% since 1973; and the suggested mid point is too high and should not be considered.

Moved by Walker/Hand to follow the recommendation.

Mayor Buckley asked Mrs. Walker if her motion is for a baseline of \$29,146/\$21,050 (Mayor/Council) or \$18,173/\$13,125.

Mrs. Walker said that her motion is for the recommendation. Mrs. Poole pointed out that the recommendation does not include the baseline. She asked Mrs. Walker to read her motion so that people in the audience can hear. The City Manager clarified that the recommendation does not specify the baseline. Discussion continued about the motion.

Mrs. Hand stated that she feels there should be some incentive for people who want to serve. She added that increasing the salaries could attract qualified people to serve. And, if the salary remains as is, she does not believe we will get qualified candidates to serve.

Mayor Buckley's motion to postpone this item until January did not receive a second. Mrs. Hand called the question. Mayor Buckley said that he can't call the question because it does not have a revised baseline salary.

Mrs. Walker said that anyone who serves deserves to be compensated more than the current Council salary level. She referenced the amount of time required to prepare for and attend meetings.

Discussion continued.

The maker/seconder clarified that the motion is to establish the baseline salary at the midpoint - \$18,173 for the Mayor and \$13,125 for Council.

Mayor Buckley stated that he believes this is too high. Mrs. Hand said the Mayor should consider the amount of hours he spends doing his job. She added that she was very busy when she served as Vice Mayor. Also, she pointed out that the Mayor serves on City Council, Airport Authority, Metropolitan Planning Organization and Space Coast League of Cities.

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Mrs. Poole commented that all of these committees do not go with the Mayor's job. The discussion should relate to salaries only.

Mr. Palmer said he believes the baseline in the motion is high. Mayor Buckley said he could go along with \$12,000/\$8,000.

The question, as clarified, was called. The roll call vote was:

Aye: Walker and Hand

Nay: Contreras, E. Palmer, Poole, C. Palmer and Buckley

Motion failed.

Mrs. Palmer said she would support, beginning November 2004, for the salaries to start going up 2%. She added that in theory, this will provide incentive for well educated people to become active in the community and run for office. Periodic increases based on an increase in the cost of living should be considered; however, she can't support this large of an increase.

Mayor Buckley asked that this issue return early in 2004.

Added to the Agenda:

- 24.1 COUNCIL ACTION RE: Letter of Agreement between the City of Melbourne and Wal-Mart Stores to amend the site plan for the proposed Wal-Mart Neighborhood Market located on the west side of Babcock Street, south of Florida Avenue

Excerpt from the City Attorney's memorandum: Recently City Council approved a site plan for Wal-Mart at the southwest corner of Babcock Street and Florida Avenue. The plan does not depict a billboard that currently exists on the property. Wal-Mart was under the impression from the seller of the property that the billboard lease could be terminated at any time. Wal-Mart has reviewed the lease and determined that it cannot be terminated. The lease is in effect until March 1, 2008. The billboard could continue to exist on the property as a non-conforming use for many years to come. However, staff has worked out a letter of agreement with Wal-Mart, whereby they agree to remove the billboard by April 1, 2008.

Mrs. Poole asked how a billboard can be non-conforming and grandfathered under the existing Code. Attorney Gougelman said that a billboard is considered a structure.

In response to Mr. Palmer, Mr. Gougelman explained the ownership of the property.

A brief discussion followed.

Moved by E. Palmer/Walker to approve the letter of agreement and authorize the City Attorney to execute the letter on behalf of the City. Motion carried unanimously.

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25. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

Mayor Buckley stated that he would like to attend the Governor's Municipal Mentoring Symposium in St. Petersburg, Florida January 12, 2004. This would require a \$45 registration fee and an overnight stay.

Moved by E. Palmer/Poole for approval. Motion carried unanimously.

Mrs. Hand said she believes that the new Fire Station #74 is a nice building; however the color is poor – blue building with big red doors. Mrs. Walker agreed and said she has a problem with the color, too. Mrs. Palmer said the building looks nice, but with the muted colors in the surrounding area, it stands out like a sore thumb.

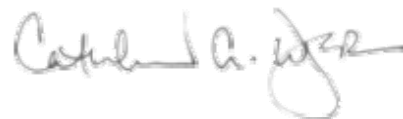
Chief Chamberlin said that when he viewed the conceptual drawing, the colors looked more muted. He added that he gave final approval; however, he is not happy with the color.

Following a brief discussion, Mrs. Palmer asked staff to obtain a cost estimate to paint the building earth tone colors.

26. ADJOURNMENT

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

The meeting adjourned at 9:55 p.m.



City Clerk – 12/18/2003

Approved by Council 1/14/2003