

CITY OF MELBOURNE, FLORIDA
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL
JANUARY 13, 2004

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. Council Member Grace Walker 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
	Amy W. Elliott	Assistant City Manager
	Cindy Dittmer	Planning & Economic Development Director

4. PROCLAMATIONS AND PRESENTATIONS

Mayor Buckley displayed the Municipal Mentoring Achievement Award that he accepted on behalf of the City from Governor Jeb Bush. Nine cities in the state received the award.

Mayor Buckley reported that the recent death of Joe Mullins has created a vacancy on the Citizens Advisory Committee (CAC) of the Brevard Metropolitan Planning Organization. He reported that he is actively seeking interested applicants. The next meeting of the CAC will be held in February.

5. APPROVAL OF MINUTES - Regular Meeting – December 9, 2003

Moved by Contreras/Hand for approval. Motion carried unanimously.

6. CITY MANAGER'S REPORT

City Manager Jack Schluckebier reminded Council about the Arbor Day activities scheduled for January 16, 10:00 a.m., at the new fire station located on Hibiscus Boulevard/Hickory Street.

7. PUBLIC COMMENTS

None.

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UNFINISHED BUSINESS

8. COUNCIL DISCUSSION RE: Discussion regarding the development of an ordinance, which would prohibit all signs in the City rights-of-way, including real estate, political and temporary. (Postponed – 11/25/03)

Code Enforcement Administrator Dan Porsi reviewed the agenda report. 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. Mr. Porsi reviewed pictures, which show permitted and non-permitted signs at various intersections and an intersection without any signs. He also noted that community events could be advertised on the City's attraction boards at City Hall, the Auditorium, etc.

Continuing, Mr. Porsi said that the placement of a temporary sign requires a \$50 bond. Many applicants decide to forfeit the bond after the event, which requires City staff to remove the signs. Also, folks who do not have a permit place their signs throughout the City after seeing the permitted signs in the rights-of-way.

Mr. Porsi distributed a report listing the 40 entities currently permitted to place signs throughout the City. Each entity places numerous signs resulting in hundreds of signs placed in the rights-of-way. Inspectors work Monday through Saturday and on any given Saturday, approximately 25 – 50 signs that are not permitted are picked up by 11:00 a.m.

Council Member Loretta Hand referenced the current list and said it is critical for the Space Coast Blood Bank to be able to place signs when they have a need for blood. Mr. Porsi replied that could be addressed through an off premise directional sign approved by Council. He added that he is not sure a temporary sign in the right-of-way attracts a person who is driving by to donate blood.

Vice Mayor Cheryl Palmer said the fact that so many people/businesses use the rights-of-way indicates that the public wants this. Therefore, staff should look at limiting the number allowed and levying a penalty for those that do not remove their signs.

With regard to an election year, Mrs. Palmer said that her name is "in the public" since she is the incumbent. It would be advantageous for a new person to be able to put up signs. In the interest of fairness, she said she supports allowing the public to get its message out.

Council Member Pat Poole disagreed and stated that the number of signs has gotten out of hand. People are nailing signs to telephone poles. And, during an election signs can be placed on private property. Also, realtors will allow signs to be placed on their property. We do not have to allow signs on City rights-of-way.

Mrs. Palmer pointed out that the lion's share of signs is put up with a permit. The City can control the permit by limiting the number of signs and levying a penalty. As for signs that are nailed to poles, that is already illegal. She stressed that we need to focus on

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enforcement, penalties and restrictions.

Mrs. Poole replied that it takes time and money for our staff to check the list at each intersection to determine which signs are legal. This is a burden on our Code Enforcement Division.

Mrs. Hand discussed the amount of money involved with placing political signs. She commented that she believes a candidate would be pleased if he/she did not have to put up signs. And, if we have an ordinance that prohibits placement, that is fair game. Candidates can put their money into newspaper advertisements, brochures, etc. Also, signs can be placed on private property. As it stands now, signs wind up in gutters, torn, blowing around, etc. She concluded by saying she will support eliminating signs in the rights-of-way.

Council Member Ed Palmer asked the City Attorney to address the content of signs and limiting the size and number placed.

Attorney Gougelman said that regulating signs by content runs into the First Amendment. We may not restrict the number of days prior to an election that political signs can be placed. And, courts have ruled that we have no business regulating by type of sign – real estate, garage sale, for sale, political. That is why our local sign code is content neutral and stays away from the language that is in a sign. The U. S. Supreme Court has said that we may regulate the size and number as long as the regulations are reasonable. Valid types of regulations focus on size, method of placement, location, etc.

Mayor Buckley asked if the City could raise the amount of the bond and limit the number of signs placed. Attorney Gougelman said that the requirement to post a large bond before placing the signs would probably be ruled against. The courts look more favorably on having a penalty if the signs are not removed within so many days following the election.

Continuing, Attorney Gougelman said he believes limiting the number would be fraught with problems.

Following a brief discussion, Attorney Gougelman said that currently a political sign bond is \$150, yet a sign bond for the placement of temporary signs is \$50. He said that this results in regulating content and is problematic.

A brief discussion continued.

Moved by Poole/Hand that we (develop an ordinance that would) prohibit signs in the City rights-of-way. The roll call vote was:

Aye: E. Palmer, Poole, and Hand

Nay: Contreras, Walker, C. Palmer and Buckley

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Motion failed.

9. ORDINANCE NO. 2003-98: (Second Reading/Public Hearing) An ordinance amending Chapter 32, City Code to require annexation of property seeking water or sewer service. (First Reading – 12/09/03)

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

Moved by Hand/E. Palmer for approval of Ordinance No. 2003-98. The roll call vote was:

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

Nay: C. Palmer

Motion carried.

10. ORDINANCE NO. 2003-99: (Second Reading/Public Hearing) An ordinance amending Chapter 32, City Code to provide for an increase in water connection charges. (First Reading – 12/09/03)

Attorney Gougelman read Ordinance No. 2003-99 by title. There were no comments from the audience.

Moved by Poole/C. Palmer for approval. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2003-100 (ED-2003-04) AVIDYNE, CORP.: (Second Reading/Public Hearing) An ordinance granting an Ad Valorem Tax Exemption for a period of five years totaling an estimated \$161,916.25. (First Reading – 12/09/03)

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

Moved by E. Palmer/Walker for approval.

Mrs. Poole said that we have existing businesses that have made it on their own without an exemption. Bringing in new businesses with exemptions could lead to putting existing businesses out of business, and this is not in the best interest of the City.

The question was called. The roll call vote was:

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

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Nay: Poole

Motion carried.

NEW BUSINESS

12. COUNCIL ACTION RE: L-5 and L-6 canals water transmission main, Project C02301.

- a. Contract award for construction of the L-5 and L-6 canals water transmission main, Project No. C02301, Maxwell Contracting, Inc., Titusville, FL - \$1,287,000.
- b. Supplement No. 175 to the Continuing Consultants Contract for inspection services for waterline construction and for Trailer Haven waterline replacements, Project No. C02301, Frazier Engineering, Inc., Melbourne, FL - \$36,400.
- c. Interlocal agreement with Brevard County for relocation of water mains as part of the Wickham Road widening project, Project No. C02301.

Mr. Ralls reviewed the agenda report and responded to general questions about the project.

Moved by Contreras/Hand for approval of the pipeline construction contract with Maxwell Contracting, Inc. in the amount of \$1,287,000. Motion carried unanimously.

Moved by Walker/E. Palmer for approval of Supplement No. 175 to Frazier Engineering's continuing consultant contract in the amount not to exceed \$36,400. Motion carried unanimously.

Moved by E. Palmer/Contreras for approval of the Interlocal Agreement with Brevard County, authorization for the City Manager to execute the agreement and authorization for a transfer to Brevard County based on actual bid not to exceed \$260,000. Motion carried unanimously.

13. COUNCIL ACTION RE: Contract award for Fiscal Year 2003/04 street resurfacing, Project No. C03600, APAC-Florida, Inc., Melbourne, FL - \$794,007.50 and appropriation of an additional \$22,007.50 from the Local Option Gas Tax fund balance to this project budget.

Mr. Ralls briefed Council and responded to questions.

Moved by E. Palmer/Hand for approval of the contract with APAC Florida, Inc. in the amount of \$794,007.50 and appropriation of an additional \$22,007.50 from the Local Option Gas Tax fund balance to this project's budget. Motion carried unanimously.

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14. COUNCIL ACTION RE: Contract award for the installation of electrical upgrades to Lake Washington Water Treatment Plant Sludge Facility, Project No. C02304, Florida Industrial Electric, Inc., Longwood, FL - \$175,635 and transfer of \$5,135 from Water & Sewer Miscellaneous Projects to this project budget.

Mr. Ralls briefed Council and answered questions about the project.

Moved by Hand/Contreras for approval of the construction contract with Florida Industrial Electric, Inc. in the amount of \$175,635 and transfer of \$5,135 from the W/S Miscellaneous Projects account to this project's budget. Motion carried unanimously.

15. COUNCIL ACTION RE: Contract award for the construction of the Fee Avenue Park swimming pool building and related site work, Project No. C03103, P.A.V.C.O. Construction, Inc., FL - \$453,168.

Mr. Ralls reviewed the agenda report and responded to questions.

Moved by Walker/Poole for approval of the contract with P.A.V.C.O. Construction, Inc. in the amount of \$453,168.00. Motion carried unanimously.

16. COUNCIL ACTION RE: Contract award for the construction of two clay tennis courts at Fee Avenue Park, Project No. C03702, Accurate Tennis Courts, Inc., Delray Beach, FL - \$93,940 and transfer of \$47,037 from recreation impact fees to this project budget.

Mr. Ralls briefed Council and answered general questions about the project and the proposed materials.

Moved by Poole/Contreras to approve the contract with Accurate Tennis Courts, Inc. in the amount of \$93,940 and transfer of \$47,037 from recreation impact fees to this project's budget. Motion carried unanimously.

Recessed: 7:58 p.m.

Reconvened: 8:10 p.m.

17. COUNCIL ACTION RE: Supplement No. 174 to the continuing consultants contract for mechanical integrity testing and report for the Grant Street Injection Well, Project No. C03317, Frazier Engineering, Inc., Melbourne, FL - \$63,837.

Mr. Ralls briefed Council.

Moved by Hand/Poole for approval of Supplement No. 174 to Frazier Engineering's continuing consultant contract in the amount of \$63,837. Motion carried unanimously.

18. COUNCIL ACTION RE: Contract award for sewer structure refurbishment, SBP, Inc., Pensacola, FL - \$141,520.

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Mr. Ralls reviewed the agenda report.

Moved by E. Palmer/C. Palmer to authorize the City Manager to enter into a unit price contract with SBP, Inc., Pensacola, Florida for Sewer Structure Refurbishment for a total amount of \$141,520. Motion carried unanimously.

19. COUNCIL ACTION RE: Contract award for rehabilitation of sanitary sewer lines, Insituform Technologies, Inc., Jacksonville, FL – \$669,465.

Mr. Ralls reviewed the agenda report.

Moved by Hand/Walker to authorize the City Manager to enter into a contract with Insituform Technologies, Inc., Jacksonville, Florida for CIPP Rehabilitation of Sanitary Sewer Lines in the amount of \$669,465 and \$34,464 budget transfer as recommended. Motion carried unanimously

20. CONSENT AGENDA:

Moved by Hand/Contreras for approval of the consent agenda, items “a – p”.

Staff responded to various questions; however, no items were removed from the agenda.

The question was called. Motion carried unanimously.

The consent agenda was approved as follows:

- a. Amendment No. 6 to the professional engineering services contract for the Phase III demolition at the D.B. Lee Wastewater Treatment Plant, Project C04317, Hazen and Sawyer - \$46,480.
- b. Authorization for use of transportation impact fees for reimbursement to Brevard County for construction of sidewalks on Riverside Drive - \$17,495.
- c. Change Order No. 2 to contract to construct Fire Station No. 74, Project No. 02113, Building Management Systems, Inc., Melbourne, FL - \$14,023.31 and transfer of \$15,121.61 from Project No. C04104 to this project budget.
- d. Authorization for City Manager to negotiate a contract with Public Resources Management Group, Inc., Maitland, FL, to provide a water and wastewater revenue sufficiency analysis and financial forecast to support the Water and Sewer Improvement Revenue Bonds, Series 2004.
- e. Purchase of a custom Pierce Contender Fire Pumper Truck, Ten-8 Fire Equipment, Bradenton, FL - \$196,360.

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- f. Blanket purchases of submersible lift station pumps, Ellis K. Phelps & Co., Apopka, FL - \$70,000; and above ground lift station pumps, R.C. Beach & Associates, Inc., Dunedin, FL - \$10,000.
 - g. Purchase of three vehicles, Classic Chevrolet, Winter Park, FL - \$37,000 and Garber Chevrolet, Green Cove Springs, FL - \$17,886.
 - h. Replacement of light poles and wiring at Southwest Park Ballfield, Dixon Electric, Inc., Cocoa, FL - \$19,866.
 - i. Blanket purchase of tires, Gatto's Tire & Auto Service, Melbourne, FL - \$37,000; and Glenn's Tire, Melbourne, FL - \$24,000.
 - j. Contract award for fire hydrant replacement and valve installation, Mueller Service Company, Pompano Beach, FL - \$163,463.50.
 - k. Contract award for fire hydrant exterior refurbishment, Mueller Service Company, Pompano Beach, FL - \$52,470.
 - l. A request for use of budgeted HOME Program owner-occupied housing rehabilitation funds for reconstruction of owner-occupied units (replacement housing) and authorization to apply the specified lien periods to replacement housing projects receiving \$35,000 or less in assistance.
 - m. Resolution No. 1857: A resolution adopting an interlocal agreement between the City of Palm Bay and the City of Melbourne, providing for law enforcement services for Florida Avenue.
 - n. Resolution No. 1858: A resolution providing procedures for release of satisfaction of a code enforcement lien on private property; and consideration of fine reduction of code enforcement board orders levying a fine. (Reference the November 25, 2003 Council Minutes, Item 18)
 - o. Contract award for emergency sewer repair at Lift Station 15, Insituform Technologies, Inc., Jacksonville, FL - \$40,306 and transfer of funds from the Water & Sewer Non-Departmental Contingency budget to the Sewer Collection budget to fund the repairs.
 - p. Contract award for mowing, trimming, and clearing of vacant or developed lots with overgrowth, Space Coast Quality Lawn Maintenance, West Melbourne, FL - \$20,000.
21. PRELIMINARY PLAT APPROVAL (SD-2003-10) SHADOW WOOD SUBDIVISION: (Public Hearing) Preliminary plat approval for the Shadow Wood Subdivision, on a 34.17-acre parcel, zoned R-1B (Single-Family Residential) and C-1 (Neighborhood Commercial), located on the east side of Wickham Road, north of Pebble Creek

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Street. (Owner – John Massaro) (Applicant – B.S.E. Consultants, Inc.)
(Representative – Scott M. Glaubitz) (P&Z Board – 12/04/03)

Planning and Economic Development Director Cindy Dittmer reviewed the agenda report. The Planning and Zoning Board recommended approval of the preliminary plat for Shadow Wood Subdivision, consisting of a three-sheet plan prepared by B.S.E. Consultants of Melbourne, Florida, Project Number #10684.01, stamped and sealed date of November 13, 2003, subject to the following conditions:

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

Any substantial change to the Preliminary Plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the Preliminary Plat includes, but is not limited to: 1) an increase of more than 10 lots; or 2) a decrease in the size of tracts intended to provide open space requirement.

- b. The owner/developer shall provide a permit from the Florida Fish and Wildlife Conservation Commission to mitigate and/or relocate gopher tortoises found on the property and from the U. S. Fish and Wildlife Service for confirmation of scrub jay findings. Permits from St. Johns River Water Management District are required for any wetland impacts.
- c. Provide an acceleration and deceleration lane on Wickham Road if deemed necessary and required by the City Engineering Department and Brevard County.
- *d. Prepare a signal warrant analysis for the Wickham Road and Pebble Creek Street intersection to determine if warrants are met for a traffic signal.

*Staff reviewed previous development approvals and determined that Council required the “Preserve at Longleaf” to install the signal at their cost for this intersection. Therefore, condition “d” should be eliminated.

Council Member Richard Contreras asked if the subdivision will have private roads. Mrs. Dittmer said that the subdivision will be gated. The roads will be built to City specification; however, they will be maintained by the homeowners’ association.

Mrs. Palmer said that Elena Drive as depicted on the plat is fairly long. She asked if the applicant intends to install any type of traffic calming measures. Mrs. Dittmer said that staff should have noted that during preliminary plat review and recommended Council add that as a condition.

Scott Glaubitz, B.S.E. Consultants, Inc., distributed three handouts – reduced version of the preliminary plat, site plan exhibit showing the entrance at Pebble Creek Street, and drawing showing placement of the subdivision sign. Mr. Glaubitz discussed the drainage on the site and the minimal impact this development will have on wetlands – 0.08 acres

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is the impact and they will be required to provide mitigation for 0.25 acres. The completed gopher tortoise survey indicates 13 burrows, which amounts to four and a fraction of a fifth tortoise on site. He added that they will not submit for that permit right away since Fish and Wildlife no longer issues extensions.

Continuing, Mr. Glaubitz said they have gone through an extensive process for scrub jays. Fish and Wildlife required two surveys and multiple site inspections after B.S.E. reported finding no scrub jays. They discovered scrub jays crossing their property to feed from private feeders located in Pebble Creek. Even though no birds were found on their property, they settled and agreed that they had nine acres of impact. This will require them to acquire 18 acres of suitable scrub jay habitat.

Mr. Glaubitz said that their lot layout is similar to Pebble Creek; the layout should be pleasing to everyone in the area. The entrance to this subdivision will be shared with Pebble Creek. A roundabout will be provided and those entering Pebble Creek will turn right and those entering Shadow Wood will turn left. Additionally, he agreed with providing traffic calming on Elena Drive during the construction process.

Mr. Glaubitz reported that they met with representatives from Pebble Creek regarding location of the subdivision sign. Pebble Creek wants visibility and Shadow Wood needs visibility. He referenced the handout, which shows where the sign will be located, and said that representatives from Pebble Creek agree with the location. Mr. Glaubitz concluded by agreeing with the conditions.

In response to Mr. Palmer, Mr. Glaubitz said that they submitted this development with private roads. However, the entrance will have to be public since it will be used by both subdivisions. He added that they want to investigate before determining if the roads will be public or private.

Mr. Contreras asked for additional information about the “representatives” from Pebble Creek Subdivision.

Charles Barrett, 4554 Rivermist Drive, Treasurer, Pebble Creek Homeowners’ Association, stated that he met with the design engineer (for Shadow Wood) and they worked through the placement of the Shadow Wood sign so that it will not block the Pebble Creek sign. The president of the association and two other members have also been involved. This has also been the topic of discussion at a homeowners’ meeting.

Responding to Mrs. Poole, Mr. Glaubitz said that they will have to obtain a right-of-way use agreement for placement of the sign. Additionally, they will need two directional signs. One would be a ground monument that will direct people left or right to Shadow Wood or Pebble Creek.

Mrs. Poole questioned the data about a gopher tortoise using more than one hole. Mr. Glaubitz explained that they have performed surveys for 15 years using published criteria from Fish and Wildlife. The environmental people on his staff have confirmed the data. He added that a gopher tortoise typically has up to three burrows. He confirmed that the

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permit will be for five and under and the permitting agency will determine if they have to pay into an off site mitigation bank.

Mrs. Poole asked why they have to mitigate for scrub jays if no birds were found. Mr. Glaubitz said they reached a point in the negotiation process where it was better to compromise than to fight. He stressed that he backs his survey, which indicates no scrub jays on their property. The birds cross their property to reach the private feeders.

Mrs. Poole asked if buyers will be informed that Tract A is commercial. Mr. Glaubitz replied yes and added that he is a firm believer in full disclosure. He commented that they have been before the Planning and Zoning Board for the commercial parcel. The development of both will probably go hand in hand.

Moved by Contreras/E. Palmer for approval, subject to the conditions, with the elimination of condition “d” (preparation of signal warrant analysis).

Mrs. Palmer asked for a condition regarding traffic calming devices on Elena Drive.

The maker/seconded agreed that the motion includes a new condition, which will require traffic calming measures to be constructed on Elena Drive.

The question was called. Motion carried. Mrs. Poole voted nay because of the negative environmental impact on the area.

22. SITE PLAN APPROVAL (SP-2003-31) HARBOR CITY TOWERS CONDOMINIUMS: (Public Hearing) Site plan approval for an 18-unit, nine-story condominium on a single parcel plus a portion of a parcel totaling 0.33 acres, located on the west side of Brecht Court, south of East New Haven Avenue, and north of Melbourne Avenue. (Owner – Hynes Properties, LLC) (Applicant/Representative – David T. Menzel, MAI Architects Engineers, Inc.) (P&Z Board – 12/04/03)

Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board recommended approval of the site plan for Harbor City Towers Condominiums, consisting of a four-sheet plan prepared by MAI Architects Engineers, Inc. of Melbourne, Florida, stamped and sealed date of November 25, 2003, subject to the following conditions:

- a. 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 in the number of units proposed; 3) the addition of a driveway or access points into the building;

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or 4) any substantial change to the façade as approved in the attached rendering/elevation.

- b. Architectural Review Board approval must be received for the proposed building.

Mrs. Poole asked where construction workers will park and if the applicant has made arrangements; where heavy equipment will be stored; whether a traffic study was completed; if consideration has been given to Melbourne and New Haven Avenues being hurricane evacuation routes; if there is a required amount of park area; and how this development will promote the public health, safety, welfare, economic order and quality of life for the community. And, she asked how an additional 151 trips per day is acceptable in an area that is already congested.

Mrs. Dittmer replied that public parking is available in the area; the development will pay recreation impact fees; and the development is consistent with the Future Land Use and compatible with the surrounding uses.

Mayor Buckley called for disclosures. Mrs. Poole stated that she walked every inch of this property and looked at every tree and plant.

Dave Menzel, 2200 Front Street, MAI Architects Engineers, Inc., reported that Dr. Hynes has seven acres on south Crane Creek that is vacant. They will use that for parking and staging/storage of heavy equipment. He added that the workers will be permitted to park in any public parking lot in Downtown Melbourne.

Mr. Menzel noted that everything on the site plan falls within the City Code, including height and setbacks. He agreed with the stipulations.

There were no other comments from the public.

Moved by Contreras/Hand for approval of the site plan subject to the conditions noted.

Mrs. Poole read from an August 12, 2003 Florida Today newspaper article about Dr. Hynes and his vision for development.

Mayor Buckley interrupted and asked what this has to do with the site plan on the agenda.

Continuing, Mrs. Poole said that this development will require extra police services and will cause pollution. Council must decide what is compatible in the area. She asked why one man should be allowed to change Melbourne's historic area to a "skyline". He doesn't reside in Melbourne and has no roots here.

At the request of Mrs. Poole, Attorney Gougelman read a letter dated July 17, 2002 from Dr. Hynes to the former Planning and Economic Development Director Peggy Braz.

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Mrs. Poole stated that Dr. Hynes purchased a piece of property, which destroyed the plan for a Florida Forever Land Acquisition grant. He has approached Florida Tech about the oceanographic area and boating facilities.

Mr. Contreras called a point of order and asked how this discussion relates to the site plan on the agenda.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

23. ORDINANCE NO. 2004-01 (CPA-2003-10) AND ORDINANCE NO. 2004-02 (Z-2003-967) DALE B. WILLIAMS: Ordinances providing for a comprehensive plan amendment and rezoning on a 1.35-acre parcel, located on the east side of Wickham Road, north of Lake Washington Road. (Owner – Robert & Virginia Younkin) (Applicant/Representative – Dale B. Williams) (P&Z Board - 12/04/03)

a. Ordinance No. 2004-01/CPA-2003-10: (First Reading/Public Hearing) An ordinance changing the land use from Medium Density Residential to Commercial/Medium Density Residential.

b. Ordinance No. 2004-02/Z-2003-967: (First Reading/Public Hearing) An ordinance changing the zoning from R-2 (One-, Two-, and Multiple-Family Dwelling) to R-P (Residential Professional).

Attorney Gougelman read each ordinance by title. Mrs. Dittmer briefed Council. The Planning and Zoning Board unanimously recommended approval of this request.

Dale B. Williams, 4360 Windover Way, said that he is the proposed purchaser of the property. The intended use will be a one-story professional space. He noted that his wife is a dentist in the area and he is looking to build an office for her and have lease space in order for the project to be more feasible.

Mr. Contreras asked the tenor of the adjacent homeowners' association. Mr. Williams said they were concerned about use of the property, landscaping and lighting. He provided them a preliminary site plan and believes that they are satisfied.

Mr. Contreras asked if the purchase of the property was contingent on approval of the rezoning. Mr. Williams replied yes.

There were no other comments from the public. Mrs. Poole disclosed that she was at the Planning and Zoning Board meeting when this item was discussed.

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Moved by Hand/Walker for approval of Ordinance No. 2004-01. Motion carried unanimously.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-02. Motion carried unanimously.

24. ORDINANCE NO. 2004-03 (CPA-2003-12), ORDINANCE NO. 2004-04 (Z-2003-969), AND ORDINANCE NO. 2004-05 (CU-2003-19) AND SITE PLAN APPROVAL (SP-2003-32) INDIAN RIVER CONDOMINIUMS: Ordinances providing for a comprehensive plan amendment, rezoning, and conditional use for 1.03 acres with site plan approval in order to develop a six-story multiple-family condominium project on 5.01± acres, located on the east (north) side of Harbor City Boulevard, east of Ballard Drive and north of Laurie Street. (Owner – River Bluff III Corporation) (Applicant/Representative – David T. Menzel) (P&Z Board – 12/04/03)

a. Ordinance No. 2004-03/CPA-2003-12: (First Reading/Public Hearing) An ordinance changing the land use from Commercial to Commercial/Medium Density Residential on a 0.51-acre parcel.

b. Ordinance No. 2004-04/Z-2003-969: (First Reading/Public Hearing) An ordinance changing the zoning from C-2 (General Commercial) to R-2 (One-, Two- and Multi-Family Dwelling Residential) on a 0.51-acre parcel.

c. Ordinance No. 2004-05/CU-2003-19/SP-2003-32: (First Reading/Public Hearing) An ordinance granting a conditional use to allow a building height of up to 59 feet and site plan approval for the 5.01-acre project.

Attorney Gougelman read the ordinances by title. Mrs. Dittmer reviewed the agenda report. The Planning and Zoning Board unanimously recommended approval of this request subject to the following conditions in Ordinance No. 2004-05:

a. 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 in the number of units proposed; 3) any increase in building height; or 4) the addition of a driveway.

b. All trees shall be preserved unless located in a driveway, paved parking lot, building pad, or retention area. All structures, driveways, parking spaces and aisles, and retention areas shall be shifted whenever possible to preserve trees. Initially, trees shall only be removed for driveways, drainage facilities, and/or model units. All hardwood trees less than 10 inches in diameter impacted by

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the proposed plan shall be relocated on site. All trees to be removed shall be removed in conjunction with a building permit and identified by Code Enforcement personnel.

- c. The applicant shall obtain appropriate environmental permits to provide for treated stormwater discharge into the Indian River Lagoon.
- d. Provide an opaque buffer consisting of a six-foot high fence, wall or hedge or other existing or newly planted vegetation along the north property boundary adjacent to the River Bluff Condos.
- e. Extend the public sidewalk along U. S. 1 to a point approximately 200 feet south of the property boundary, and provide an easement along the U. S. 1 frontage for the sidewalk to provide at least a six-foot wide sidewalk separated at least three feet from the curb. A sidewalk extension along the east side of U. S. 1, adjacent to the river, shall be constructed provided that sufficient upland area is available to provide a sidewalk, if permitted by FDOT.
- f. Driveway access improvements including the need for directional driveways and turn lanes shall be provided as required by the Florida Department of Transportation.
- g. The applicant shall successfully abandon and vacate an unnamed 20 to 22-foot wide right-of-way that bisects Tax Parcel 787 (Deed Book 670, Page 289).
- h. The proposed building shall be substantially consistent with the rendering of the building as shown on the site plan.

Mayor Buckley called for disclosures. Mrs. Poole said while she was at the Planning and Zoning Board meeting, she listened to information being exchanged in the hallway about this project.

Mrs. Palmer asked Mrs. Dittmer to indicate on the plan where the building was previously located. She recalled that there was a lot of discussion from the River Bluff condominium owners about placement of the structures.

Mrs. Dittmer said that the applicant is ready to thoroughly discuss the shifting.

Mr. Palmer said that the site plan indicates a swimming pool and tennis courts. Mrs. Dittmer said that is an error in the plan notes; the tennis courts have been eliminated.

Phil Nohrr, 1800 West Hibiscus Boulevard, attorney representing the applicant, reviewed the original plan and the proposed plan. He agreed that the language referencing the tennis courts is an error and will be removed. There are no tennis courts on the site plan. The new site plan was developed after they were able to acquire the restaurant property. It provides for an increase in green area and a large, unobstructed view of the river; shifting of a building 30' farther away from the

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neighbors to the north; increase in setbacks; one entrance/exit; and elimination of tennis courts. The sight lines of the new plan will not adversely impact the River Bluff residents.

Mr. Nohrr stated that with the purchase of additional land, they are asking for 10' additional height. He explained that when the first plan was prepared, the restaurant property was not available. Although they are asking for four additional units, they are not increasing the density. They have worked with their neighbors, upgraded, provided sidewalk infrastructure and have modified the site plan in a positive way. He concluded by agreeing with the stipulations.

Mr. Nohrr confirmed for Mrs. Poole that they plan to remove the Australian pine trees.

Mr. Palmer said that the applicant was previously granted a conditional use for a 49' height. Now they purchased more property, added additional units and want to go an additional 10' to a height of 59'. He said that he can't buy the rationale.

Mr. Nohrr said that it is their belief that the City wants a nice open strand for view of the river along U. S. 1. Because they are leaving the southern area alone, they need an increase in height. Mr. Palmer said that the southern parcel would not allow for construction. Mr. Nohrr disagreed and said that they could design on that parcel. He added that they are moving the buildings away from the neighbors to the north.

Mr. Palmer said that he has talked to the neighbors to the north and that is why he is asking these questions. He added that economics drives the train and this change relates strictly to finances. He said that he can't support the additional 10'.

Mr. Contreras said that he understands the offsetting and compromising with the north/south property and the change in ingress/egress. He asked the approximate cost of the condominiums. Mr. Nohrr said that they have not decided; however, perhaps in the range of \$250,000 - \$350,000.

Mrs. Palmer asked how far the southern most building is located from U. S. 1 on the new plan. Mr. Nohrr said 64' and added that on the previous plan it was 54'. Mrs. Palmer asked if there will be a wall along the sidewalk on U. S. 1.

Dave Menzel, architect for the project, said they plan to have a landscaped berm with hedges and trees. The berm will be 25' wide by 6' tall and will back up to the garage building.

Mrs. Palmer said it is her understanding that the River Bluff residents are pleased that the Australian pines will be removed. Mr. Menzel said that is correct and added that a number of residents from River Bluff are at this meeting.

William A. White, President, River Bluff Condominium Association, said that the plan has been developed out of respect for the existing River Bluff buildings. The developer has met with the residents many times and the most popular view is that the

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residents want to see this project. He added that the additional 10' in height will result in a building being moved farther away from their property; the view of the river will not be obstructed.

Gary Walker, 441 North Harbor City Boulevard, River Bluff, stated that he is in support of this development. Removal of the used car lot and restaurant will result in enhanced values.

Stephanie Taormina, 441 North Harbor City Boulevard, said that she owns two units and is in favor of this development. The developer has addressed every concern and has been considerate. She noted that if one of the buildings on the proposed site is moved 30' closer to her, that will adversely impact her.

In response to Mr. Palmer, Ms. Taormina said she has not heard any negative comments from residents about this development.

Henry Goode, 441 North Harbor City Boulevard, stated that this is a better plan that will benefit the area.

Sheila Vaughn, 441 North Harbor City Boulevard, said that she fully supports the project. She added that she has not heard from anyone who doesn't support it.

Tom Tuohey, 441 North Harbor City Boulevard, said that at one meeting, a couple expressed concern about the pine trees; however, nothing negative was said about the development. The developer has listened and addressed the concerns. They welcome development of the property, which is now an eyesore and look forward to this end of U. S. 1 being improved. He added that he hopes this will spearhead renewed interest and bring back some vitality.

Robert Hereford, developer, said that this development will eliminate blight. Placement of the condominiums will benefit everyone. They have provided more visibility. The units will range from \$300,000 - \$600,000. The additional 10' will result in more green space. There will be less square footage on the ground; less area impacted. The pavement around the restaurant and used car lot will be eliminated; therefore, the environment is winning on this project.

Mr. Palmer asked why the tennis courts were eliminated. Mr. Hereford said that studies show not too many people play tennis. He added that it makes sense to put the additional four units on top. Direct riverfront is worth more on top and the neighbors will benefit for the same common goal.

Moved by C. Palmer/Walker for approval of Ordinance No. 2004-03. Motion carried unanimously.

Moved by Hand/Walker for repeal of Ordinance No. 2003-46. Motion carried unanimously.

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Moved by C. Palmer/Walker for approval of Ordinance No. 2004-04. Motion carried unanimously.

Moved by Walker/Contreras for approval of Ordinance No. 2004-05. Motion carried unanimously.

Recessed: 10:40 p.m.
Reconvened: 10:45 p.m.

25. ORDINANCE NO. 2004-06 (AR-2003-144c) DAIRY ROAD/FLORIDA AVENUE ANNEXATION: (First Reading/Public Hearing) An ordinance providing for the annexation of approximately 40 acres, including a portion of Florida Avenue right-of-way, located west of Dairy Road and north of Florida Avenue. (Owners/Applicants - James W. Morgan Jr., Charles Brown/William Marcus, John Weare Jr., Thomas and Carol Guthrie, Barbara Losson, Steven J. Morgan, F. Alan Ford/Catherine A. Ford, Wendy L. Potter, William and Wendy Potter, William Edward and Susan Lyndall Riebsame, Vincent H. and Margaret E. Angleton, Alfred and Jane Theis, Carlton and Sandra Holder, and Gregory and Margaret Parker) (P&Z Board – 12/04/03)

Attorney Gougelman read the ordinance by title. Mrs. Dittmer reviewed the agenda report. She said that Brevard County has expressed concern about who will continue maintenance of Florida Avenue. City staff will work with County staff to make a determination. The Planning and Zoning Board recommended approval of the request.

Mayor Buckley opened the public hearing. There were no comments.

Moved by Poole/Hand for approval of Ordinance No. 2004-06.

Mrs. Poole said that this area will be an asset and should be welcomed into the City of Melbourne.

The question was called. Motion carried unanimously.

26. ORDINANCE NO. 2004-07 (AR-2003-145) NORTH WICKHAM ROAD ANNEXATION: (First Reading/Public Hearing) An ordinance providing for the annexation of approximately 145± acres, including Wickham Road and Pat McKee Place rights-of-way, located east and west of Wickham Road, north of Post Road, and south of Pineda Causeway. (Owners/Applicants/Representatives - Pineda Crossing Corporation, Jay Moynahan, Owner/Applicant - EVV Florida Investments, Ltd., K2 Development, Representative - Bob Kurlander, Owner - Hoff of Brevard, Owner - Bear Hugs Child Care Inc., Owner - Brevard County, Owner - Pineda Crossing Homeowners Association, Owner - Deer Lakes Homeowners Association) (P&Z Board – 12/04/03)

Attorney Gougelman read Ordinance No. 2004-07 by title. Mrs. Dittmer briefed Council. The County's comments relate to maintenance of the drainage ditch. The Planning and Zoning Board recommended approval of this request.

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Mr. Contreras disclosed that in November 2003 he met with Mr. Moynahan to discuss annexation. In December 2003 he and the City Manager met with County Commissioner Carlson to discuss this annexation.

Mayor Buckley noted that the time is past 11:00 p.m. Council concurred with continuing the meeting to finish the agenda.

Mrs. Poole asked if this annexation is considered urban sprawl. Mrs. Dittmer replied no and stated that it is considered in-fill. Mrs. Poole asked if the City is going to be able to continue supplying water to the beach areas, West Melbourne, etc. at this rate of growth. Mrs. Dittmer said that the City has ample water capacity.

Mayor Buckley opened the public hearing.

Jay Mohnahan, President, Pineda Crossing Corporation, said that it is their intention to relocate and pipe the ditch. Therefore, future maintenance will not be a consideration. He added that he looks forward to working with the City.

Moved by E. Palmer/Contreras for approval of Ordinance No. 2004-07. Motion carried.
Mrs. Poole voted nay.

27. ORDINANCE NO. 2004-08: (First Reading) An ordinance providing for a moratorium on slot machines within the City of Melbourne.

Attorney Gougelman read the ordinance by title. Mrs. Palmer asked why the moratorium will end June 30, 2004. Attorney Gougelman replied that legally moratoriums have to have an ending date. That does not mean that the date can't be extended or shortened.

Continuing, he noted that the ordinance allows anyone who filed an application prior to the date the moratorium was instituted (December 9, 2003) to have his/her application processed. The ordinance also provides for appeal.

Mary Jane Shaw, JAX Phonograph, College Street, Jacksonville, (Penny Ante Spin Games) said that they are part of Collins Entertainment. Their company runs amusement games, pool tables, jukeboxes, etc., and they have a gaming license in Montana. She added that she is the operations manager for Florida.

Ms. Shaw stated that they have letters that indicate that their machines, according to the state statutes, require an element of skill. The better a player gets, the better the chances are at winning. The winner receives gift certificates – no cash. She pointed out that they run a good business and cannot risk losing their gaming license. Ms. Shaw concluded by saying they rented a building on Babcock Street and have been refused an occupational license.

Mayor Buckley asked who has determined that these are games of skill. Ms. Shaw said that the machines have skill stops with different levels. She said that she can produce a

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letter stating that their games are games of skill.

Mayor Buckley said that the City Council has a problem believing that these are skill games. He added that Ms. Shaw's request will be evaluated.

Mrs. Palmer asked if the definition of slot machine in our ordinance came from the state statutes. Attorney Gougelman replied yes. Mrs. Palmer asked if an application for an occupational license has an expiration date. Mr. Gougelman said not to his knowledge. He reported that the applicant that has the application considered "pending" (Starlight Palace) submitted in June; however, the license was not immediately issued because the facility was still under construction. They are within a few days of receiving their certificate of occupancy from the Building Division; therefore, their application is still pending and considered active.

Joanne Gervais, Starlight Palace, said that she has the application that is considered pending. She explained that she applied for the occupational license in June; however, the premise was not ready for occupation. She detailed the reasons why construction was delayed and stated that they are close to having construction complete. Ms. Gervais explained that this is simply an amusement center. The majority of their customers are retired.

Mayor Buckley said that Ms. Gervais' application is not affected by the moratorium.

Moved by C. Palmer/Walker to approve Ordinance No. 2004-08. Motion carried unanimously.

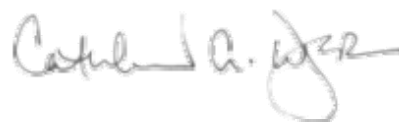
28. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

None.

29. ADJOURNMENT

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

The meeting adjourned at 11:23 p.m.



City Clerk – 1/22/2004

Approved by City Council: 1/27/2004