

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 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 Pat Poole 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

City Manager Jack Schluckebier presented the Government Finance Officers Association "Certificate of Achievement for Excellence in Financial Reporting" to Director of Finance Michele Ennis.

Luz Elena Bueno, Consul of Mexico, presented information to the City on the higher security Consular ID card called *Matricula Consular de Alta Seguridad* which is being provided to Mexicans living in the United States.

5. Approval of Minutes – January 13, 2004 Regular Meeting

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

6. City Manager's Report

Mayor Buckley referenced the request by Council Member Pat Poole to add Item 22.1 to the agenda.

Moved by Poole/E. Palmer to add Item 22.1 to the agenda. Motion carried unanimously.

7. Public Comments

Joe Tyler, 2800 Turtle Mound Road, representing property owners in the Turtle Mound, Lake Breeze and Melissa Court area, asked the City to expedite City water service to this area through the annexation process.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

City Manager Jack Schluckebier said the City intends to work with people who present such petitions to effect their interest in City services. He asked Planning & Economic Development Director Cindy Dittmer to provide an overview of the City's annexation activities.

Mrs. Dittmer displayed a map, which outlines two unincorporated areas where citizens have expressed interest in being annexed into the City. She explained that in the past the City has processed voluntary annexation requests. However, in the Lake Washington area, annexations will be handled by referendum. The process will begin with an ordinance, and following adoption of the ordinance the City will proceed with a mail ballot election. The anticipated timeframe for this is April/May.

UNFINISHED BUSINESS

8. 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)
- a. Ordinance No. 2004-01/CPA-2003-10: (Second Reading/Public Hearing) An ordinance changing the land use from Medium Density Residential to Commercial/Medium Density Residential. (First Reading – 1/13/04)
  - b. Ordinance No. 2004-02/Z-2003-967: (Second Reading/Public Hearing) An ordinance changing the zoning from R-2 (One-, Two-, and Multiple-Family Dwelling) to R-P (Residential Professional). (First Reading – 1/13/04)

City Attorney Paul Gougelman read Ordinance Nos. 2004-01 and 2004-02 by title. There were no disclosures by Council and no comments from the public.

Moved by Contreras/Hand for approval of Ordinance No. 2004-01. The roll call vote was:

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

Nay: Poole

Motion carried.

Moved by E. Palmer/Walker for approval of Ordinance No. 2004-02. The roll call vote was:

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

Nay: Poole

Motion carried.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

9. 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 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)
- a. Ordinance No. 2004-03/CPA-2003-12: (Second Reading/Public Hearing) An ordinance changing the land use from Commercial to Commercial/Medium Density Residential on a 0.51-acre parcel. (First Reading – 1/13/04)
- b. Ordinance No. 2004-04/Z-2003-969: (Second 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. (First Reading – 1/13/04)
- c. Ordinance No. 2004-05/CU-2003-19/SP-2003-32: (Second 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. (First Reading – 1/13/04)

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

Moved by Hand/C. Palmer for approval of Ordinance No. 2004-03. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by Contreras/Walker for approval of Ordinance No. 2004-04. The roll call vote was:

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

Nay: None

Motion carried unanimously.

Moved by E. Palmer/C. Palmer for approval of Ordinance No. 2004-05. The roll call vote was:

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

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Nay: None

Motion carried unanimously.

10. ORDINANCE NO. 2004-06 (AR-2003-144c) DAIRY ROAD/FLORIDA AVENUE ANNEXATION: (Second 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) (First Reading – 1/13/04)

The City Attorney read Ordinance No. 2004-06 by title. There were no disclosures by Council and no comments from the audience.

Moved by Poole/Hand for approval of Ordinance No. 2004-06. The roll call vote was:

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

Nay: None

Motion carried unanimously.

11. ORDINANCE NO. 2004-07 (AR-2003-145) NORTH WICKHAM ROAD ANNEXATION: (Second Reading/Public Hearing) An ordinance providing for the annexation of approximately 135± 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) (First Reading – 1/13/04)

Attorney Paul Gougelman read the ordinance by its title. There were no disclosures by Council and no comments from the public. Mayor Buckley referenced the letter from Jay Moynahan in support of the request.

Moved by Contreras/Walker for approval of Ordinance No. 2004-07.

Vice Mayor Cheryl Palmer asked if all of the property owners requested this annexation. Mrs. Dittmer said that three parcels did not join the petition – the daycare center, office complex, and County lift station. However, they were all notified and none objected.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Mrs. Poole pointed out that this property was once proposed for a school site by the School Board. However, scrub jays are located on the property and cost of mitigation would have been too much.

The question was called. The roll call vote was:

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

Nay: Poole

Motion carried.

12. ORDINANCE NO. 2004-08: (Second Reading/Public Hearing) An ordinance providing for a moratorium on slot machines within the City of Melbourne. (First Reading – 1/13/04)

From the agenda report: The recommendation is to delay action for 90 days pending assessment of effectiveness of a law enforcement option prior to final action regarding licensing moratorium.

Attorney Gougelman read Ordinance No. 2004-08 by title. The City Manager reviewed the agenda report.

Police Chief Don Carey reported that he met with State Attorney Norm Wolfinger about this issue. They discussed the protocols necessary for a successful prosecution in this circuit. He added that he is confident that we will have a resolution within 90 days.

Mrs. Palmer asked what we are expecting within 90 days. Chief Carey said that within 90 days he feels we will be finished gathering evidence in order to determine if the equipment in our City is considered gambling paraphernalia.

Council Member Richard Contreras referenced the newspaper article distributed, “Arcade machines declared illegal – Daytona Beach” where the judge indicated that some skill was involved. Chief Carey clarified that it will be totally up to a judge to determine if these are games of skill or games of chance. It will be law enforcement’s job to gather appropriate evidence from a number of different directions to determine probable cause. If there is probable cause, the case will be taken to the State Attorney.

A brief discussion followed regarding the City’s strategy.

Michael Wolf, attorney representing JAX Phonograph, referenced Section 849.161, Florida Statutes, and noted that the law does not apply to “...machines which operate by means of the insertion of a coin and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons...” He stressed that the key to the law is “by application of skill.” The law doesn’t define how much skill. In the Volusia case, the judge found that there was an application of skill. Mr. Wolf cited specific cases where the courts have found that these are games of skill.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Continuing, Mr. Wolf said that the defendants (in the Volusia case) entered a plea because of other elements of the statute. These included insertion of a coin versus insertion of currency and issuance of coupons versus receipt of merchandise.

Mrs. Palmer said she has a problem with either a moratorium or the law enforcement option. She reminded Council that we already have at least one other business that will be licensed immediately. The City Council believes this is an illegal activity; therefore, it is not necessary to open the door. She recommended that Council continue with the moratorium and pursue the law enforcement option.

Attorney Gougelman said that Council could proceed with the moratorium; however, staff is recommending that be held in abeyance for 90 days. If the machines were just discovered – without the moratorium on the table – the Police Chief would probably be directed to enforce the law and work with the State Attorney's Office. The Chief has reported that he has met with the State Attorney and they have agreed upon an approach as to how these cases can be brought to court. If we proceed with the moratorium, we are probably going to be questioned on the legality of imposing a moratorium on an occupational license. The second issue is that somebody will probably set up machines anyway because they want to be a test case.

Mrs. Palmer said that the citizens of Florida have made it clear that they do not want casino gambling in the State of Florida. The Police Chief and the State Attorney feel they have grounds to move forward; they feel this is an illegal activity. In light of this, she said that she is not comfortable issuing an occupational license for an illegal activity.

Mayor Buckley said he can't agree. Staff is giving us its recommendation on the best way to handle this. We need to delay the moratorium and allow the Police Chief to work with the State Attorney. Mrs. Poole said she supports following staff's recommendation.

Mayor Buckley read the recommendation from the agenda report. Moved by Poole/Buckley for approval of the recommendation.

Council Member Ed Palmer said that sometimes it makes sense to procrastinate as long as we continue the investigation. However, he said he also feels we are deliberately allowing a gambling business to operate with a license. If there is any doubt, we should delay; therefore, he supports the 90-day break.

Council Member Loretta Hand said that on the grass roots level Council needs to take a stand against gambling, just like Council took a stand against abortion. She stressed that we need to keep gambling out of our City.

Mrs. Palmer pointed out that by voting yes on the motion on the floor, businesses will be licensed. Mr. Palmer disagreed and said that by delaying, no licenses would be issued. A brief discussion followed.

Mr. Schluckebier said that with the current ordinance, the City has been operating under the concept of "pending legislation." That is why licenses were not issued after December 9. The recommendation is that we suspend that pending legislation concept

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

and put a new effective date on the pending ordinance about the moratorium. If Council extends the final consideration of this ordinance (for 90 days) staff would begin issuing licenses tomorrow.

Attorney Gougelman informed Council that issuance of an occupational license does not result in the City of Melbourne saying “you may operate a laundromat, barber shop, etc.” Zoning controls the location of an activity. The occupational license is nothing more than a receipt for a tax that has been paid. If a business conducts an illegal activity, the occupational license offers no protection. A person can still be arrested.

Following a brief discussion, Attorney Gougelman clarified that there won't be a criminal conviction within the 90-day time period referenced by the Police Chief. Within that period, the Chief will take action, get a case into the hands of the State Attorney, and the State Attorney will file charges.

Mr. Palmer said he does not want to deny a person in the City a right to do what is legal. Mr. Contreras asked if we are in jeopardy of running afoul of the law if we do not issue occupational licenses. Attorney Gougelman said he suspects that there are people ready to be a test case.

Mr. Contreras said that inasmuch as he vehemently opposes gambling, it doesn't appear as if the occupational license approach is the vehicle to putting a halt to this activity.

A brief discussion continued. The question was called. The roll call vote was:

Aye: E. Palmer, Poole, Walker and Buckley

Nay: Contreras, Hand, and C. Palmer

Motion carried.

Recessed: 7:58 p.m.  
Reconvened: 8:10 p.m.

NEW BUSINESS

13. COUNCIL DISCUSSION RE: Melbourne Housing Authority project concept design presentation for Ramshur Towers.

Ron Sellers, Chief Executive Officer, Brevard Family of Housing Authorities, stated that he and William Deatruck, Director of Facilities, are going to provide Council with an update on the plans/future of Ramshur Towers.

William Deatruck provided background information on Ramshur Towers, a concrete and steel building that was constructed in 1970. The building houses 100 low-income residents; 80 elderly and 20 non-elderly. Each unit is a 400 s.f. box. The building has

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

major problems. It is old, worn out and as far as public housing for elderly and handicapped, it is no longer feasible to continue.

Ramshur Towers constitutes 40% of the Melbourne Housing Authority stock. Last year, 80% of the housing subsidy was used to keep the facility operational. A brief synopsis of major work required includes windows, exterior surface, heat/air, sprinkler system, fire/surveillance system, plumbing and electrical to Code, balcony repair, interior work and temporary relocation. The estimated cost for required work is \$2.9 million and the building would still not be compliant with the Americans with Disabilities Act.

The Housing Authority has a goal to provide an affordable elderly community with the “aging in place” concept. As a person needs services and assistance, he/she would not have to move. In order to provide such a facility, the current facility would need to be sold. The property has been appraised and there is interest from the development community to keep it as is.

In response to questions from Council, Mr. Deatrck provided the following information: the Housing Authority has not nailed down the cost for the new project/facility; appraisals on the Ramshur site range from \$4.5 million to \$6 million; proceeds from the sale would go towards the new development; a condition of sale would be that residents would remain in Ramshur Towers until the new facility is complete; residents would be provided vouchers, which would be used to pay the purchaser of the Ramshur site; and the purchaser of the Ramshur site would have income generated from the residents’ vouchers.

Mr. Palmer agreed that Ramshur Towers has outlived its usefulness. He noted that he is sure developers would be happy to get a hold of this building. In return, the Housing Authority will be able to better accommodate the elderly.

A brief discussion followed. Mr. Sellers said he would like the opportunity to return periodically and update Council on the progress and to replace misinformation with factual information.

14. COUNCIL ACTION RE: Contract award for Eau Gallie waterline replacements, Phase One, Segment III, Project C03308, J.A.M. Construction Services, Titusville, FL - \$347,409.74.

A memorandum was distributed from City Engineer Howard Ralls requesting this item be withdrawn from the agenda to determine if the bidder can comply with all the contractual requirements.

Moved by Contreras/Walker to withdraw this item from the agenda until we get more information. Motion carried unanimously.

15. CONSENT AGENDA:

Moved by Hand/E. Palmer for approval of the consent agenda. (\*See substitute motion below.)

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Mrs. Poole discussed the following concerns with item “e”: The Community Redevelopment Agency (CRA) Advisory Committee took action to select Rick Hester as the Waterfronts Florida project manager and reimburse Mr. Hester’s travel expenses to a conference prior to Council taking action on the resolution; the City Council is the CRA; the Waterfronts Committee was supposed to be in place at the time we were designated as a Waterfronts Community; we received the Waterfronts designation in July 2003 yet didn’t have a committee until December 2003; Mr. Hester does not have the qualifications to be a project manager plus he is not a member of the CRA advisory committee; the project manager should be selected by the City Council, not the advisory committee; and funds should not be reimbursed after the fact.

Mr. Schluckebier clarified that Carol Crispen is the staff member who is the designated *program manager*. She is the City’s manager for that grant and it is her salary that is used as a matching basis for the grant. The State of Florida dealt us a sidwinder with the term *project manager*. The advisory committee and Mr. Hester understand that Mr. Hester will not be paid. With regard to the travel reimbursement, the City Manager said he would have to review the documentation to determine if Mr. Hester was eligible for reimbursement and whether the advisory committee can direct expenses. Later in the discussion, he confirmed that he will report the outcome to Council.

Continuing, Mr. Schluckebier said that the announcement about the Waterfronts designation was made in September. The information regarding the requirement for a local committee appeared in late November. The first opportunity the advisory committee could act on this was December. For simplicity and to avoid having an extra committee, staff suggested that the advisory committee double as the Waterfronts Committee.

Mr. Palmer added that this is not an issue about someone trying to gain power base. This is an enthused group working towards the betterment of the Eau Gallie area.

Mrs. Palmer said she would like item “h” removed from the agenda because she is not comfortable with certain aspects of the pre-annexation agreements.

\*Moved by Hand/E. Palmer to approve the consent agenda with the deletion of item “h.”  
Motion carried unanimously.

Mr. Schluckebier said the recent Code change requires affected parties to enter into an agreement with the City for services. The City Manager won’t be negotiating a lot of issues; the idea is to effect the Code change by requiring people to enter into an agreement, which requires them to annex at some future point when they become contiguous.

Mrs. Palmer noted that although staff is working on the zoning issue, she hasn’t seen the overlay zoning district. And, the agreement protects the City in every way and it protects the property owner to a certain degree. One section would require the property owner to bear the expense of a court battle if the County Commission decides to fight the annexation.

Mr. Schluckebier said that the pre-annexation agreement applies only to urban service areas – areas where we are in agreement with the County. The language regarding legal

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

expenses with the County Commission is in place so that a property owner doesn't attempt to muscle out of the agreement.

Mr. Schluckebier confirmed for Mrs. Palmer that the agreements run with the land and are recorded. A good title search would insure the interest of a purchaser.

Moved by Contreras/Hand for approval of Item "h". Motion carried. Mrs. Palmer voted nay.

The consent agenda was approved as follows:

- a. Supplement No. 179 to the Continuing Consultants Contract for Parkway Drive waterline extension, Frazier Engineering, Inc. - \$48,550, and transfer of \$58,550 from Harlock Road water main extension project into this project budget.
  - b. Change Order No. 1, Babcock Street Medians & Landscaping Improvements, Project No. 00611, Wm. Turnbaugh Construction, Inc., Melbourne, FL - \$26,765.50 and transfer of \$15,000 from Babcock Redevelopment – Reserve for Future Projects budget into this project budget.
  - c. Award of piggy-back contract for purchase of Odophos (ferrous sulphate) for the Mechanical Integrity Testing of the Grant Street Injection Well, Project No. 03317, US Filter/Davis Process, Tallevast, FL - \$21,672.
  - d. Purchase of a 2004 Chevy Blazer SUV, Garber Chevrolet, Green Cove Springs, FL - \$19,628; and a Vermeer Brush Chipper, BC-1400, Vermeer Southeast Sales & Service, Inc., Orlando, FL - \$27,100.
  - e. Resolution No. 1859: A resolution establishing an ad hoc committee to be known as the Waterfronts Florida Partnership Committee, comprised of members from the Olde Eau Gallie Riverfront Community Redevelopment Agency Advisory Committee.
  - f. Resolution No. 1860: A resolution encouraging the Florida Legislature to support certain municipal issues during the 2004 Legislative session.
  - g. Resolution No. 1861: A resolution authorizing the City Manager, Assistant City Manager, or City Engineer to execute Florida Department of Transportation State Road/Temporary Road Closing Applications.
  - h. Resolution No. 1863: A resolution authorizing the City Manager to execute pre-annexation agreements.
  - i. Lien Cancellation CE 01-133: Request for cancellation of Code Enforcement lien (Robert A. Conwell, 400 Bluff Drive) subsequent to payment of \$506.
16. Resolution No. 1862: (Public Hearing) A resolution authorizing transmittal of two major Comprehensive Plan Amendments of over 10 acres each (CPA-2003-11/CPA-2003/13) to the Department of Community Affairs. (P&Z Board – 1/08/04)

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

- a. CPA-2003-11: Comprehensive Plan Amendment for transmittal to the Department of Community Affairs, after annexation, on a total of 120± acres, designating a Future Land Use of Commercial on 74.53 acres, Low Density Residential on 40.74 acres, and Conservation on 6.4 acres, located east and west of Wickham Road, north of Post Road, and south of Pineda Causeway. (Owner/Applicant/Representative - Pineda Crossing Corporation, Owner/Applicant - Jay Moynahan, 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)
  
- b. CPA-2003-13: Comprehensive Plan Amendment for transmittal to the Department of Community Affairs, after annexation, designating a Future Land Use of Low Density Residential on a total of 34.73 acres, 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)

The City Attorney read the resolution by title. Mrs. Dittmer reviewed the agenda report. There are two proposed map amendments being proposed during this major Comprehensive Plan Amendment.

The first area (CPA-2003-11) is 120± acres along North Wickham Road, which will designate a Commercial Future Land Use on 74.53 acres, Low Density Residential Future Land Use on 40.74 acres and a Conservation Future Land Use on 6.4 acres. Annexation of these properties appeared earlier on the agenda as Item No. 11.

The second area (CPA-2003-13) is 34.73 acres located north of Florida Avenue and west of Dairy Road, which will designate a Low Density Residential Future Land Use on 34.73 acres. Annexation of these properties appeared earlier on the agenda as Item No. 10.

Once approval is received from the Department of Community Affairs, ordinances for the Comprehensive Plan Amendment and zonings will be brought forward to City Council for approval.

The Planning & Zoning Board voted unanimously for approval of both Comprehensive Plan Amendments.

There were no disclosures by Council and no comments from the public.

Moved by E. Palmer/Contreras for approval of Resolution No. 1862.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Mrs. Poole commented that she is opposed to one of the annexations. Mr. Schluckebier pointed out that this item does not relate to annexation – it relates to assignment of a land use category.

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

17. PRELIMINARY PLAT APPROVAL (SD-2003-11) HAMMOCK TRACE PRESERVE SUBDIVISION: (Public Hearing) Preliminary plat approval on a 78.85-acre parcel, zoned R-1B (Single-Family Residential), located on the east side of John Rodes Boulevard, south of Dow Road, and north of Ellis Road. (Owner – Arthur W. Sitrin, Trustee) (Applicant – RJP Development Company) (Representative – Vaheed B. Teimouri) (P&Z Board – 1/08/04)

Mrs. Dittmer briefed Council. The Planning & Zoning Board voted unanimously for approval of SD-2003-11 consisting of a five-sheet plan prepared by Teimouri & Associates, Inc., of Melbourne, Florida, Project Number #2003-112, File Number 2003112C2, and a stamped and sealed date of December 18, 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.

Mrs. Dittmer confirmed for Mr. Palmer that the last few agenda packages have not included the water/sewer capacity report for development items. Staff has been tracking the information, however, and will resume providing this requested report.

Mr. Palmer asked about school capacity information. Mrs. Dittmer replied that we do not have school concurrency. She reported that the School Board has a representative serving on the Planning and Zoning Board. Essentially, the School Board has said that the high schools and a number of elementary and junior high schools are over capacity. However, the School Board has not addressed what it intends to do about that. Mr. Palmer stated that Council has to be concerned about whether schools will be available.

Gregory T. Wood, applicant, reported that the School Board is aware of the plan and had an opportunity to object. To date, the board has not objected.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Mr. Palmer said he would like to know if we have the capacity to educate the children who will live in this development. Mr. Wood said he thinks it is part of the School Board's job to let us know if they can't.

Mr. Palmer asked staff to provide additional information on school capacities.

Mr. Contreras asked about the amenities and if a playground is planned. Mr. Wood said a playground is not planned. They will provide a swimming pool with cabana house, walking areas along the wetlands, and a 50' buffer around the project.

Mrs. Poole asked if any wetlands will be filled. Mr. Wood said there will be a minimal impact and they will mitigate by providing additional wetlands. He pointed out that they have designed around most of the wetlands and hardwood uplands. Additionally, they have to meet all of the requirements of U. S. Fish and St. Johns River Water Management District. He confirmed that an Environmental Impact Assessment Report has been submitted.

Mrs. Poole pointed out that the homes will be developed on R-1B lots. She asked the price range. Mr. Wood said \$139,000 - \$200,000. He added that this will provide housing for people who work in the immediate area. There will be a general mix of houses with/without children. In response to the Mayor, Mr. Wood agreed with the conditions.

There were no other comments from the public.

Moved by Hand/Walker for approval of the recommendation, including the conditions.

Mrs. Poole stated that this is over-development and she won't vote for it.

Mrs. Palmer said that Council has to have a legal reason to turn down a project. She added that she is glad they are preserving some of the wetlands.

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

18. PRELIMINARY PLAT APPROVAL (SD-2003-12) CASCADES AT LONGLEAF SUBDIVISION: (Public Hearing) Preliminary plat approval on an 18.94-acre parcel, zoned R-2 (One-, Two-, and Multiple-Family), located west of Wickham Road, north of the intersection of Post Road and Wickham Road. (Owner – The Preserve at Melbourne, LLC by Altman Development Corporation, Jeffrey A. Roberts, President) (Applicant – Mercedes Homes, Bo Bar-Navon) (P&Z Board – 1/08/04)

Mrs. Dittmer briefed Council. The Planning & Zoning Board voted unanimously for approval of SD-2003-12 consisting of a two-sheet plan prepared by Scott Glaubitz, P.E., P.L.S. with a stamped and sealed date of December 19, 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.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Any substantial change to the preliminary plat will require review and approval by the Planning and Zoning Board, Local Planning Agency, and City Council. A substantial change in the preliminary plat includes, but is not limited to: 1) any increase or decrease in the number of access points including public or private streets to or from the subdivision; or 2) an increase of more than two lots.

- b. Should 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. Upon completion of the subdivision improvements, the applicant/developer shall file a map amendment with the Federal Emergency Management Agency to correctly identify the flood zone designation/elevation of the property as a result of the improvements. Copies of the changes approved by FEMA shall be provided to the City of Melbourne Planning and Economic Development, Building (Code Compliance) and Engineering Departments.
- d. A storm water management study and system design require City of Melbourne Engineering approval prior to final plat consideration and Federal Emergency Management Agency Letters of Map Amendment or Letters of Map Revision will be required prior to the issuance of a certification of completion for any development activities that alter any existing Special Flood Hazard Areas.
- e. The developer agrees to keep any grade changes on the site to a minimum and remove all on-site invasive species of vegetation.
- f. Access is to be provided to the pedway from the adjacent property to the north.

Mrs. Poole pointed out that children in this area are already being bused to school. She added that new development is making the problem worse.

In response to Mrs. Palmer, Mrs. Dittmer showed the ingress/egress to Wickham Road on the map. Mrs. Palmer asked the reason for requiring the pedway at the northwest corner. Mrs. Dittmer said that it is a requirement that this whole development, along with anything to the north, provide the connection to Windover Farms so that children could walk to school instead of being bused.

Mr. Palmer asked about the “fence note” on the plat. Mrs. Dittmer said that this is a typical note on plats; property owners may not fence their property in such a way that easements, drainage structures, etc. would be blocked. Fencing must meet the City Code requirements.

Mayor Buckley opened the public hearing. There were no comments. The applicant was not present.

Moved by Hand/Contreras for approval subject to the conditions. Motion carried. Mrs.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Poole voted nay.

19. SITE PLAN APPROVAL (SP-2003-33) SHADOW WOOD COMMERCIAL: (Public Hearing) Site plan approval for four buildings totaling 55,000 square feet for retail/professional office uses on a portion (4.52 acres) of a 34.17-acre parcel, located on the east side of Wickham Road, north of Post Road. (Owner – John Massaro) (Applicant/Representative – Scott Glaubitz, B.S.E. Consultants, Inc.) (P&Z Board – 1/08/04)

Mrs. Dittmer reviewed the agenda report. The Planning & Zoning Board voted unanimously for approval of SP-2003-33 consisting of a two-sheet plan prepared by BSE Consultants, Inc. of Melbourne, Florida, with a stamped and sealed date of December 15, 2003, subject to the following conditions:

- a. Any change to the site plan will require reevaluation of the site plan by the City 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; or 4) any substantial change to the façade as approved in the attached rendering/elevation.

- \*b. With the potential of generating 6,790 trips per day, a traffic study should be performed and completed prior to final consideration by City Council. This traffic study will designate a more detailed account of square footage by the uses to be developed; therefore a more accurate account of traffic impacts may be known and mitigated appropriately.

\*Staff deleted the requirement for condition “b” based on a subsequent traffic analysis submitted by the applicant.

Mrs. Poole said that traffic is already bumper to bumper on Wickham Road. She added that this was scrub jay habitat and we are devastating everything we have.

There were no disclosures by Council.

Scott Glaubitz, applicant, displayed and distributed a map showing the development. He referenced the traffic study and said that it is within the level of service on Wickham Road. He added that it is a conservative study with the trips being overstated; it does not take into consideration capture traffic.

Mr. Glaubitz discussed the traffic improvements that will be made for the development. He said he believes motorists will primarily use the right in/right out on Wickham Road and the FPL road as opposed to Pebble Creek Street.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Mr. Glaubitz referenced the residential portion, which was approved at the last meeting, and said that they have already incorporated traffic calming measures into the design.

Mr. Contreras asked for additional information about the FP&L road. Mr. Glaubitz said that FP&L was required to dedicate that portion as a public roadway. He added that Attorney Gougelman is researching the issue.

Attorney Gougelman reported that the Engineering Department is working with FP&L to obtain the deed for the roadway. It was a requirement of the development permit.

Responding to Mrs. Poole, Mr. Glaubitz said that the residential portion will be built in unison with the commercial, although the commercial will lag about six months behind. There will be full disclosure to purchasers in the residential area about the commercial development.

Council Member Grace Walker asked what time of day the traffic study was done. Mr. Glaubitz said the study was conducted when school was in session and out of session covering a period from 7:00 a.m. to 6:00 p.m.

Mr. Glaubitz agreed with the conditions.

That concluded comments from the public.

Moved by E. Palmer/Walker for approval, excluding condition “b.” Motion carried. Mrs. Poole voted nay.

20. ORDINANCE NO. 2004-09 (Z-2003-965) CALICO HEIGHTS SUBDIVISION: (First Reading/Public Hearing) An ordinance rezoning eight parcels consisting of 16.96 acres from C-1 (Neighborhood Commercial) and R-2 (10) (One-, Two-, and Multiple-Family) to R-1B (Single-Family Residential), located on the east side of Croton Road, south of Post Road, immediately north of the Eastwood Park Subdivision. (Owner – Norman S. Rosen) (Applicant – Tim McWilliams) (Representative – Jake T. Wise, P.E.) (P&Z Board – 1/08/04)

Attorney Gougelman read Ordinance No. 2004-09 by title. Mrs. Dittmer briefed Council. The Planning & Zoning Board voted unanimously for approval of Z-2003-965.

Mr. Contreras asked about the County’s comments on the “left turn out.” Mrs. Dittmer said that the County commented on that even though Post Road is a City right-of-way. This is an engineering issue that will be addressed during construction plan review.

Mrs. Poole asked if the wetland property the applicant wishes to lease from the City will count towards the 10% open space requirement. Mrs. Dittmer replied no.

There were no disclosures by Council.

Mrs. Poole pointed out that the R-1B subdivision will place an additional strain on our school system.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Mayor Buckley opened the public hearing.

Tim McWilliams, Careywood Drive, Melbourne, said they intend to clear the exotics on the wetland property, replace the vegetation, and clean up the area. The upland portion close to the tracks is a sand ridge that will remain for tortoises.

Mrs. Walker asked what type of vegetation will replace the exotics. Mr. McWilliams replied that they will use three different types recommended by St. Johns, each with different water requirements.

Moved by Walker/Hand for approval of Ordinance No. 2004-09. Motion carried. Mrs. Poole voted nay.

Recessed: 10:13 p.m.  
Reconvened: 10:20 p.m.

21. COUNCIL DISCUSSION RE: Reprioritization of proposed Sales Tax funded projects.

From the agenda report: There are a number of capital projects, which were to be funded by the one-cent sales tax. The defeat of the sales tax means that these projects need to be re-prioritized and funding sources to complete them need to be identified. The one-cent sales tax was estimated to generate \$4.7 million per year. The Council had identified approximately \$46 million worth of projects to undertake within the first 10 years.

Unfortunately, there is no replacement revenue source which would generate that amount of money, so staff was asked to identify the 10 most critical projects from the sales tax project list to begin the process of identifying funding and phasing these projects. Their list is attached.

The current five-year Capital Improvement Projects (CIP) schedule, with the exception of the current year, is a list of project priorities. Except for the Water and Sewer System projects, only the current year projects on the five-year CIP Schedule have planned funding sources. The general government five-year CIP totals \$31,775,612.

These improvement projects cannot be completed within the current tax and fee structure. The current structure is primarily used for recurring operating and debt service expenditures with approximately \$2.6 million set aside annually for a limited number of capital improvements and grant matching. This is on a much smaller scale than the projects listed in the CIP.

Additional funding could be derived from increased property taxes, increased stormwater utility fees, stormwater impact fees, increased transportation impact fees, special assessments, increased recreation impact fees, and fire impact fees. Additionally, there could be an initiative to seek an additional sales tax; perhaps a smaller tax for a shorter period of time – one-half cent for 10 years. This would generate substantially less

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

money, but would provide enough to make progress in completing the most critical capital improvements.

The City Manager reviewed the agenda report.

Mrs. Poole said that she would support a significant increase in impact fees because they are too low. Also, an increase may help control development, which has gone wild.

Mr. Contreras said that settling this issue in a 20 minute period would be a disservice to the City and the citizens. He recommended Council conduct a facilitated workshop dealing with budget and finances. He added that the key word is “facilitated.”

Following a brief discussion, Mr. Schluckebier said that the best bet locally, other than property taxes, might be to examine our own impact fees. He said that Mr. Contreras’s idea to work through this issue in a facilitated way is constructive.

Mrs. Palmer agreed with Mr. Contreras and said that this subject deserves more attention; a separate meeting is needed.

Council briefly discussed conducting the meeting using a town hall meeting format. Mrs. Poole said she would like to see town hall meetings conducted. She added that citizens often question why they should attend meetings when they are not heard. They won’t be able to say this if they truly have input.

Mr. Schluckebier said that he would put together a tentative agenda so that Council can facilitate input from the public in a town hall setting.

Mrs. Poole recommended that the town hall meeting be conducted before Council conducts its workshop on this issue.

The City Council briefly discussed meeting dates. The City Manager said that the town hall meeting could be conducted March 2 and Council could meet in April on this issue.

Mr. Palmer said that in order for this to be successful, it must be an informal setting.

Moved by Poole/E. Palmer for Council to conduct a facilitated town hall meeting on March 2 with a Council follow-up workshop meeting to be held in April. Motion carried unanimously.

22. COUNCIL ACTION RE: Appointment of one regular member to the Zoning Board of Adjustment.

Mrs. Poole said that there are a lot of developers on our boards. She added that the Zoning Board of Adjustment’s decisions are final, requiring court action for a dispute. Therefore, she would like to appoint James Taylor, a local attorney, to this board.

Mrs. Palmer nominated Dale Young. Mrs. Poole nominated James Taylor and said that there is no requirement that an alternate member move up. Mayor Buckley said it is

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

defeating to cut an alternate after he/she has been serving. Mrs. Hand nominated Mark LaRusso.

Moved by Walker/C. Palmer to close the nominations. Motion carried unanimously. The roll call vote was:

Young: Contreras, C. Palmer and Buckley

LaRusso: E. Palmer, Poole, Walker and Hand

Taylor: None

Appointed: Mark LaRusso (January 27, 2004 – December 2, 2006, unexpired three-year term)

Added to the agenda:

22.1 COUNCIL DISCUSSION RE: Request by Council Member Pat Poole to concerning the recent renaming of the airport terminal to “Orlando-Melbourne International Terminal”

Mrs. Poole asked when the citizens and Council were made aware of the Airport Director’s recommendation to change the name of the Airport. She added that by the time Council received the agenda, it was too late to attend the meeting.

Continuing, she said that the City has allowed the Airport Director to assume complete control over the City’s Airport. Therefore, she would like to have the City Attorney prepare an ordinance stating the City’s ownership of the Airport and the Airport Authority’s role as managers.

Regarding the renaming of the terminal, she said that this is an inappropriate, unethical and fraudulent marketing scheme. It would be deceptive to even place the name “Orlando” behind Melbourne’s name.

Mrs. Poole’s following motion did not receive a second: “To direct the City Attorney to prepare an ordinance stating the City’s control as owner of the Airport and the Airport Authority’s role as manager of the Airport. Further, requiring any major changes proposed by the Airport Director first come to Council for consideration and recommendation before being taken to the Airport Authority for approval.”

Mrs. Hand said that this issue came up previously at an Airport Authority meeting and she did not want to see the name of the Airport changed. However, the reason for the change is called “branding.” Many people associate “Melbourne” with Australia. The international travelers know Orlando and that is where the marketing strategy is coming from. The change will allow us to attract flights. And, this area does have a lot to offer. This change will not affect in state travel. She stressed that the Airport Authority is doing everything possible to get flights.

CITY OF MELBOURNE, FLORIDA  
MINUTES – REGULAR MEETING BEFORE CITY COUNCIL  
JANUARY 27, 2004

Mayor Buckley said that the name on the outside of the terminal will not change; this is for marketing purposes only. In order to attract passengers from England, Germany, Italy, etc., we need to use the name "Orlando."

A brief discussion followed. No action taken.

23. PETITIONS, REMONSTRANCES AND COMMUNICATIONS

The City Manager briefed Council on the following:

- Debbie Meshelany, a former Melbourne Police Officer and current Recycling Coordinator, passed away. Services will be conducted the morning of January 28.
- The two murals recently discussed by Council are going through the Code Enforcement process and will appear on the February Code Enforcement Board agenda.
- Lake Washington Road, between Croton Road and Highway U. S. 1, will be closed to through traffic until the afternoon of January 30 to allow installation of drainage structures for a new development in the area.

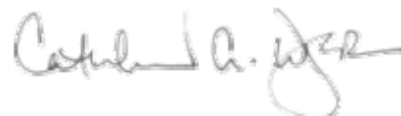
Vice Mayor Cheryl Palmer asked staff to investigate the mural on the Museum of Art and Science and building.

City Clerk Cathy Wysor briefed Council on Melbourne election activities. To date, the following people have filed: Mayor – Harry C. Goode, Jr.; District 1 – Richard P. Contreras and Mike Nowlin; District 3 – Manuel Rodriguez.

24. ADJOURNMENT

Moved by Hand/Walker for adjournment. Motion carried unanimously.

The meeting adjourned at 11:09 p.m.



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City Clerk – 2/5/2004

Approved by City Council: 2/10/2004